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Legislative Proposals Relating to Income Tax

Published by
The Honourable Ralph Goodale, P.C., M.P.
Minister of Finance

July 2005

Canada



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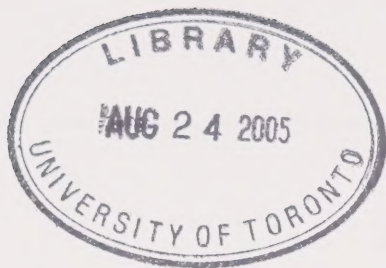
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Department of Finance
Canada

Ministère des Finances
Canada



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Price : \$35.00 including GST

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Cette publication est également disponible en français

Cat No.: F2-97/2005-1E
ISBN 0-660-19498-8

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LEGISLATIVE PROPOSALS RELATING TO INCOME TAX

1. This Act may be cited as the *Income Tax Amendments Act, 2005*.

PART 1

AMENDMENTS TO THE INCOME TAX ACT (FOREIGN INVESTMENT ENTITIES AND NON-RESIDENT TRUSTS) AND ANOTHER ACT AS A CONSEQUENCE

INCOME TAX ACT

R.S., c. 1 (5th Supp.)

Foreign corporations, trusts and investment entities

2. (1) Paragraph 12(1)(k) of the *Income Tax Act* is replaced by the following:

(k) any amount required by subdivision i to be included in computing the taxpayer's income for the year;

- (2) Subsection (1) applies to taxation years that begin after 2002.

3. (1) The portion of subsection 12.2(11) of the Act before the definition "anniversary day" is replaced by the following:

Definitions

(11) The following definitions apply in this section and in clause 94.2(11)(c)(iii)(A), and in paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

- (2) Subsection (1) applies after 2002.

4. (1) The definition "controlled foreign affiliate" in subsection 17(15) of the Act is replaced by the following:

"controlled foreign affiliate"
« société étrangère affiliée contrôlée »

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if this Act were read without reference to paragraph 94.1(2)(h) and if paragraphs (d) and (e) of that definition were read as follows:

"(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length;"

- (2) Subsection (1) applies after 2002.

5. (1) Paragraph 39(1)(a) of the Act is amended by adding the following after subparagraph (ii.2):

(ii.3) a property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the year,

(2) Subsection (1) applies to dispositions that occur after 2002.

6. (1) Paragraph 51(1)(a) of the French version of the Act is replaced by the following:

a) sauf pour l'application du paragraphe 20(21) et de l'alinéa 94(2)m, l'échange est réputé ne pas constituer une disposition du bien convertible;

(2) Paragraph 51(1)(c) of the English version of the Act is replaced by the following:

(c) except for the purposes of subsection 20(21) and paragraph 94(2)(m), the exchange shall be deemed not to be a disposition of the convertible property,

(3) Subsection 51(4) of the Act is replaced by the following:

Application

(4) Subsections (1) and (2) do not apply to

(a) any exchange to which subsection 85(1) or (2) or section 86 applies; and

(b) any exchange of property if that property was, immediately before the exchange, a specified participating interest.

(4) Subsections (1) and (2) apply to taxation years that begin after 2002. Subsections (1) and (2) also apply to

(a) taxation years of a taxpayer that begin after 2000 if a trust, to which the taxpayer, directly or indirectly, transferred or loaned property in 2001 (or would have so transferred property if section 94 of the Act, as enacted by subsection 17(1) of this Act, applied in 2001), makes a valid election under paragraph 17(2)(a) of this Act; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, to which the taxpayer, directly or indirectly, transferred or loaned property in 2002 (or would have so transferred property if section 94 of the Act, as enacted by subsection 17(1) of this Act, applied in 2002), makes a valid election under paragraph 17(2)(a) or (b) of this Act.

(5) Subsection (3) applies to exchanges that occur in taxation years that begin after 2002.

7. (1) Subsection 52(1) of the Act is replaced by the following:

Cost of certain property the value of which included in income

52. (1) In applying this subdivision, an amount shall be added in computing the cost at any time to a taxpayer of a property if

(a) the taxpayer acquired the property after 1971;

(b) the amount was not at or before that time otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property;

(c) the property is not an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to

which subsection (2) or (3) applies, or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust; and

(d) an amount in respect of the property's value was

(i) included, otherwise than under section 7 or subsection 94.2(4), in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer.

(2) Subsection (1) applies to taxation years that begin after 2002.

8. (1) Paragraph 53(1)(d.1) of the Act is replaced by the following:

(d.1) any amount required by paragraph 94(5)(a) (as that paragraph read in its application to taxation years that include December 31, 2000) to be added in computing the adjusted cost base to the taxpayer of the property;

(2) Paragraph 53(1)(m) of the Act is replaced by the following:

(m) any amount included in respect of the property

(i) in computing the foreign accrual property income of the taxpayer because of the description of C in the definition "foreign accrual property income" in subsection 95(1) (as that definition read for taxation years that began before 2003) for a taxation year of the taxpayer that began both before that time and before 2003,

(ii) under subsection 94.1(1) (as that subsection read in its application to taxation years that began before 2003) in computing the taxpayer's income for a taxation year that began both before that time and before 2003, or

(iii) under subsection 94.1(4) in computing the taxpayer's income for a taxation year that began before, or includes, that time;

(m.1) any amount required by subsection 94.2(12) or 94.3(5) to be added at or before that time in computing the adjusted cost base to the taxpayer of the property;

(3) Paragraph 53(2)(b.1) of the Act is replaced by the following:

(b.1) any amount required by paragraph 94(5)(b) (as that paragraph read in its application to taxation years that include December 31, 2000) to be deducted in computing the adjusted cost base to the taxpayer of the property;

(4) Subsection 53(2) of the Act is amended by striking out the word "and" at the end of paragraph (u), by adding the word "and" at the end of paragraph (v) and by adding the following after paragraph (v):

(w) any amount required by subsection 94.2(12), 94.3(5) or 94.4(2) to be deducted at or before that time in computing the adjusted cost base to the taxpayer of the property.

(5) Subsections (1) to (4) apply to taxation years that begin after 2002. Subsections (1) and (3) also apply to

(a) taxation years of a taxpayer that begin after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under paragraph 17(2)(a) of this Act; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under paragraph 17(2)(a) or (b) of this Act.

9. (1) Subsection 70(3.1) of the Act is replaced by the following:

Exception

(3.1) In this section, “rights or things” in respect of an individual do not include

(a) an interest in a life insurance policy (other than an annuity contract the payment for which was deductible in computing the individual’s income under paragraph 60(l) or was made in circumstances in which subsection 146(21) applied);

(b) eligible capital property;

(c) land included in the inventory of a business;

(d) a Canadian resource property;

(e) a foreign resource property; or

(f) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the individual for the individual’s taxation year in which the individual dies.

(2) Subsection 70(5.2) of the Act is replaced by the following:

Resource
property, land
inventory and
property
subject to s.
94.2(3) of
deceased

(5.2) If in a taxation year a taxpayer dies,

(a) the taxpayer is deemed

(i) to have disposed, at the time that is immediately before the taxpayer’s death, of each

(A) Canadian resource property of the taxpayer,

(B) foreign resource property of the taxpayer,

(C) property that was land included in the inventory of a business of the taxpayer, and

(D) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the taxation year, and

(ii) subject to paragraph (c), to have received at that time proceeds of disposition for each such property equal to its fair market value at that time;

(b) any person who, as a consequence of the taxpayer's death, acquires a property that is deemed by paragraph (a) to have been disposed of by the taxpayer is, subject to paragraph (c), deemed to have acquired the property at the time of the death at a cost equal to its fair market value at the time that is immediately before the death; and

(c) where the taxpayer was resident in Canada at the time that is immediately before the taxpayer's death, a particular property described in clause (a)(i)(A), (B) or (C) is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b), and it can be shown within the period that ends 36 months after the death (or, where written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances) that the particular property has, within that period, vested indefeasibly in the spouse, common-law partner or trust, as the case may be,

(i) the taxpayer is deemed to have received, at the time that is immediately before the taxpayer's death, proceeds of disposition of the particular property equal to

(A) where the particular property is Canadian resource property of the taxpayer or foreign resource property of the taxpayer, the amount specified by the taxpayer's legal representative in the taxpayer's return of income filed under paragraph 150(1)(b), not exceeding its fair market value at that time, and

(B) where the particular property was land included in the inventory of a business of the taxpayer, its cost amount to the taxpayer at that time, and

(ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired at the time of the death the particular property at a cost equal to the amount determined under subparagraph (i) in respect of the disposition of it under paragraph (a).

(3) Subsections (1) and (2) apply to taxation years that begin after 2002.

10. (1) The portion of subsection 73(1) of the Act before paragraph (a) is replaced by the following:

73. (1) For the purposes of this Part, where at any time any particular capital property (other than a specified participating interest) of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was transferred that the provisions of this subsection not apply, the particular property is deemed

(2) Subsection (1) applies to transfers that occur in taxation years that begin after 2002.

11. (1) Subsection 75(3) of the Act is amended by striking out the word "or" at the end of paragraph (c.1) and by adding the following after paragraph (c.1):

(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1)) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or

(2) Subsection (1) applies to trust taxation years that begin after 2000 except that, for trust taxation years that begin in 2001 or 2002, paragraph 75(3)(c.2) of the Act, as enacted by subsection (1), shall be read as follows:

(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1) as it reads in its application to taxation years that begin after 2002) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or

12. (1) Subsection 85(1.11) of the Act is replaced by the following:

Exception

(1.11) Notwithstanding subsection (1.1), the following property is not an eligible property of a taxpayer in respect of a disposition of the property in a taxation year by the taxpayer to a corporation:

(a) a foreign resource property, or an interest in a partnership that derives all or part of its value from one or more foreign resource properties, if

(i) the taxpayer and the corporation do not deal with each other at arm's length, and

(ii) it is reasonable to conclude that one of the purposes of the disposition, or a series of transactions or events of which the disposition is a part, is to increase the extent to which any person may claim a deduction under section 126; and

(b) a specified participating interest.

(2) Subsection (1) applies to taxation years that begin after 2002.

13. (1) Subsection 85.1(4) of the Act is replaced by the following:

Exception

(4) Subsection (3) does not apply in respect of a disposition at any time by a taxpayer of property that is

(a) a share of the capital stock of a foreign affiliate, all or substantially all of the property of which at that time was excluded property (within the meaning assigned by subsection 95(1)), to another foreign affiliate of the taxpayer where the disposition is part of a series of transactions or events for the purpose of disposing of the share to a person who, immediately after the series of transactions or events, was a person (other than a foreign affiliate of the taxpayer) with whom the taxpayer was dealing at arm's length; or

(b) a specified participating interest.

(2) Subsection 85.1(6) of the Act is amended by striking out the word "or" at the end of paragraph (d), by adding the word "or" at the end of paragraph (e) and by adding the following after paragraph (e):

(f) the exchanged foreign shares were, immediately before the exchange, specified participating interests.

(3) Subsections (1) and (2) apply to dispositions and exchanges that occur in taxation years that begin after 2002.

14. (1) Subsection 86(3) of the Act is replaced by the following:

Application

(3) Subsections (1) and (2) do not apply

(a) to any disposition to which subsection 85(1) or (2) applies; and

(b) to any disposition of property that was, immediately before the disposition, a specified participating interest.

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

15. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (j.94):

Non-resident trusts and foreign investment entities

(j.95) for the purposes of sections 94 to 94.4, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) applies to taxation years that begin after 2000.

16. (1) Subsection 91(1) of the Act is replaced by the following:

Amounts to be included in respect of share of foreign affiliate

91. (1) In computing the income for a particular taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate that ends in the particular taxation year, equal to that share's participating percentage in respect of the affiliate determined

(a) at the end of each such taxation year of the affiliate; and

(b) without regard to each share in respect of which subsection 94.2(9) applies to the taxpayer for the particular taxation year.

(2) Subparagraph 91(4)(a)(ii) of the Act is replaced by the following:

(ii) the taxpayer's relevant tax factor for the year, and

(3) Subsection (1) applies to taxation years that begin after 2002.

(4) Subsection (2) applies to the 2002 and subsequent taxation years.

17. (1) Section 94 of the Act is replaced by the following:

Treatment of Trusts with Canadian Contributors

Definitions

94. (1) The following definitions apply in this section.

"arm's length
transfer"
"transfer"
"transfer time"
"recipient"

"arm's length transfer", at any time by an entity (referred to in this definition as the "transferor") means a transfer or loan (which transfer or loan is referred to in this definition as the "transfer") of property (other than a restricted property) that is made at that time (referred to in this definition as the "transfer time") by the transferor to a particular entity (referred to in this definition as the "recipient") where

(a) it is reasonable to conclude that none of the reasons (determined by reference to all the circumstances including the terms of a trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the transfer is the acquisition at any time by any entity of an interest as a beneficiary under a non-resident trust; and

(b) the transfer

(i) is a payment of interest, of a dividend, of rent, of a royalty or of any other return on investment, or any substitute for such a return on investment, in respect of a particular property held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), or the transfer is a transfer described in paragraph (2)(g) that is an acquisition by the recipient of

(I) a unit of a mutual fund trust or of a trust that would be a mutual fund trust if section 4801 of the *Income Tax Regulations* were read without reference to paragraph 4801(b),

(II) a share of the capital stock of a mutual fund corporation, or

(III) a particular share of the capital stock of a corporation (other than a closely-held corporation) which particular share is identical to a share that is, at the transfer time, of a class that is listed on a prescribed stock exchange, and

(B) the fair market value of the property, at the transfer time, is not more than the amount that the transferor would have transferred at the transfer time in respect of the particular property to the recipient if the transferor dealt at arm's length with the recipient,

(ii) is a payment made by a corporation on a reduction of the paid-up capital in respect of shares of a class of its capital stock held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), and

(B) the amount of the payment is not more than the lesser of the amount of the reduction and the consideration for which the shares were issued,

(iii) is a refund in whole or in part of a gift that the recipient made to the transferor, if the recipient is a trust and the transferor is at the transfer time a specified charity in respect of the recipient,

(iv) is a transfer

- (A) in exchange for which, the recipient transfers or loans property (other than a restricted property) to the transferor, or becomes obligated to transfer or loan property (other than a restricted property) to the transferor, and
- (B) for which it is reasonable to conclude
 - (I) having regard only to the transfer and the exchange that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and
 - (II) that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,
- (v) is made in satisfaction of an obligation that arose because of a transfer to which subparagraph (iv) applied, if
 - (A) the transfer is not a transfer described in paragraph (2)(g),
 - (B) the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and
 - (C) the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,
- (vi) is a payment of an amount owing by the transferor under a written agreement the terms and conditions of which, when entered into, were terms and conditions that, having regard only to the amount owing and the agreement, persons dealing at arm's length with each other would have entered into, if the transfer is not a transfer described in paragraph (2)(g),
- (vii) is a payment made before 2002 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor, or
- (viii) is a payment made after 2001 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor and either
 - (A) they would have been willing to enter into the particular loan if they dealt at arm's length with each other and the payment is not a transfer described in paragraph (2)(g), or
 - (B) the payment is made before 2005 in accordance with fixed repayment terms agreed to before June 23, 2000.

<p>“beneficiary” « <i>bénéficiaire</i> »</p>	<p>“beneficiary”, under a trust, includes</p> <ul style="list-style-type: none"> (a) an entity that is beneficially interested in the trust; and (b) an entity that would be beneficially interested in the trust if <ul style="list-style-type: none"> (i) each reference in subsection 248(25) to the word “person” were read as a reference to the expression “entity (as defined by subsection 94(1))”, and (ii) for greater certainty, the reference in subparagraph 248(25)(b)(ii) to <ul style="list-style-type: none"> (A) “any arrangement in respect of the particular trust” were read as a reference to “any arrangement (including the terms or conditions of a share, or any arrangement in respect of a share, of the capital stock of a corporation that is beneficially interested in the particular trust) in respect of the particular trust”, and (B) “the particular person or partnership might” were read as a reference to “the particular person or partnership becomes (or could become on the exercise of any discretion by any entity), directly or indirectly, entitled to any amount derived, directly or indirectly, from the income or capital of the particular trust or might”.
<p>“closely-held corporation” « <i>société à peu d'actionnaires</i> »</p>	<p>“closely-held corporation”, at any time, means a corporation, other than a corporation in respect of which</p> <ul style="list-style-type: none"> (a) there is at least one class of shares of its capital stock that includes shares prescribed for the purpose of paragraph 110(1)(d); (b) it is reasonable to conclude that at that time, in respect of each class of shares described by paragraph (a), shares of the class are held by at least 150 entities each of whom holds shares, of the class, that have a total fair market value of at least \$500; and (c) it is reasonable to conclude that at that time in no case does a particular entity (or the particular entity together with any other entity with whom the particular entity does not deal at arm’s length) hold shares of the capital stock of the corporation <ul style="list-style-type: none"> (i) that would give the particular entity (or the particular entity together with those other entities) 10% or more of the votes that could be cast under any circumstance at an annual meeting of shareholders of the corporation if the meeting were held at that time, or (ii) that have a fair market value of 10% or more of the fair market value of all of the issued and outstanding shares of the corporation.
<p>“connected contributor” « <i>contribuant rattaché</i> »</p>	<p>“connected contributor”, to a trust at a particular time, means an entity (including an entity that has ceased to exist) that is a contributor to the trust at the particular time, other than an entity</p> <ul style="list-style-type: none"> (a) that is an individual (other than a trust) who was, at or before the particular time, resident in Canada for a period of, or periods the total of which is, not more than 60 months

	(but not including an individual who, before the particular time, was never non-resident); or
	(b) all of whose contributions to the trust made at or before the particular time were made at a non-resident time of the entity.
“contribution” « <i>apport</i> »	<p>“contribution”, to a trust by a particular entity, means</p> <p>(a) a transfer or loan (other than an arm’s length transfer) of property to the trust by the particular entity;</p> <p>(b) if a particular transfer or loan (other than an arm’s length transfer) of property is made by the particular entity as part of a series of transactions or events that includes another transfer or loan (other than an arm’s length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the particular transfer or loan; and</p> <p>(c) if the particular entity becomes obligated to make a particular transfer or loan (other than a transfer or loan that would, if it were made, be an arm’s length transfer) of property as part of a series of transactions or events that includes another transfer or loan (other than an arm’s length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the obligation.</p>
“contributor” « <i>contribuant</i> »	<p>“contributor”, to a trust at any time, means an entity (including an entity that has ceased to exist) that, at or before that time, has made a contribution to the trust.</p>
“eligible trust” « <i>fiducie admissible</i> »	<p>“eligible trust”, at any particular time, means a trust, other than a trust</p> <p>(a) created or maintained for charitable purposes;</p> <p>(b) governed by an employee benefit plan;</p> <p>(c) described in paragraph (a.1) of the definition “trust” in subsection 108(1);</p> <p>(d) governed by a salary deferral arrangement;</p> <p>(e) operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits;</p> <p>(f) where the amount of income or capital that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power; or</p> <p>(g) that has elected in writing filed with the Minister, on or before the trust’s filing-due date for the particular taxation year of the trust that includes the particular time (or for an earlier taxation year that ended before the particular time), that the definition “exempt foreign trust” in this subsection not apply to it for the particular taxation year (or for the earlier taxation year) and for all of its subsequent taxation years.</p>

<p>“entity” « entité »</p>	<p>“entity” includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.</p>
<p>“excluded property” « action exclue »</p>	<p>“excluded property”, at any time, means a particular property issued by a particular entity, if the following conditions are met:</p> <ul style="list-style-type: none"> (a) the particular entity is at that time a corporation, trust or partnership; (b) the particular property is at that time <ul style="list-style-type: none"> (i) a share of the capital stock of the corporation, (ii) a specified fixed interest in the trust, or (iii) an interest, as a member of the partnership, under which, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited; (c) there are at least 150 persons each of whom holds at that time property that at that time <ul style="list-style-type: none"> (i) is identical to the particular property, and (ii) has a total fair market value of at least \$500; (d) it is reasonable to conclude that no more than 10% of the total of all properties each of which is the particular property, or an identical property, is held by an entity (in this paragraph referred to as “the first entity”) or another entity with whom the first entity does not deal at arm's length; (e) property that is identical to the particular property can normally be acquired by and sold by members of the public in the open market; and (f) the particular property, or identical property, is listed on a prescribed stock exchange.
<p>“exempt amount” « somme exclue »</p>	<p>“exempt amount”, in respect of a particular taxation year of a trust, means an amount</p> <ul style="list-style-type: none"> (a) that is referred to in paragraph 104(7.01)(b) in respect of the trust for the particular taxation year and that is paid or credited to a non-resident person; or (b) that is paid in the particular taxation year (or within 60 days after the end of the particular taxation year) by the trust directly to a beneficiary (determined without reference to subsection 248(25)) under the trust, if <ul style="list-style-type: none"> (i) the beneficiary is a natural person none of whose interests as a beneficiary under the trust was ever acquired for consideration, (ii) the amount is not included in computing an exempt amount in respect of any other taxation year of the trust, (iii) the trust was created before October 30, 2003, and (iv) no contribution has been made to the trust on or after ANNOUNCEMENT DATE.

“exempt
foreign trust”
« *fiducie
étrangère
exempte* »

“exempt foreign trust”, at a particular time, means

(a) a non-resident trust, if

(i) each beneficiary under the trust at the particular time is

(A) an individual who, at the time that the trust was created, was, because of mental or physical infirmity, dependent on an individual who is a contributor to the trust or on an individual related to such a contributor (which beneficiary is referred to in this paragraph as an “infirm beneficiary”), or

(B) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust’s income or capital,

(ii) at the particular time there is at least one infirm beneficiary who suffers from a mental or physical infirmity that causes the beneficiary to be dependent on a person,

(iii) each infirm beneficiary is, at all times that the infirm beneficiary is a beneficiary under the trust during the trust’s taxation year that includes the particular time, non-resident, and

(iv) each contribution to the trust made at or before the particular time can reasonably be considered to have been, at the time that the contribution was made, made to provide for the maintenance of an infirm beneficiary during the expected period of the beneficiary’s infirmity;

(b) a non-resident trust, if

(i) the trust was created as a consequence of the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who was, during that marriage or common-law partnership, a child of both of those particular individuals (which beneficiary is referred to in this paragraph as a “child beneficiary”),

(ii) each beneficiary under the trust at the particular time is

(A) a child beneficiary under 21 years of age at the particular time,

(B) a child beneficiary under 31 years of age at the particular time who is enrolled at any time in the trust’s taxation year that includes the particular time at an educational institution that is described in clause (v)(A) or (B), or

(C) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust’s income or capital,

(iii) each child beneficiary is, at all times that the child beneficiary is a beneficiary under the trust during the trust’s taxation year that includes the particular time, non-resident,

(iv) each contributor to the trust at the particular time was one of those particular individuals or a person related to one of those particular individuals, and

(v) each contribution to the trust, at the time that the contribution was made, was made to provide for the maintenance of a child beneficiary, while the child was either under 21 years of age, or was under 31 years of age and enrolled at an educational institution located outside Canada that is

(A) a university, college or other educational institution that provides courses at a post-secondary school level, or

(B) an educational institution that provides courses designed to furnish a person with skills for, or improve a person's skills in, an occupation;

(c) a non-resident trust, if

(i) at the particular time, the trust is an agency of the United Nations,

(ii) at the particular time, the trust owns and administers a university described in paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1), or

(iii) at any time in the trust's taxation year that includes the particular time or at any time in the preceding calendar year, Her Majesty in right of Canada has made a gift to the trust;

(d) a non-resident trust

(i) that, throughout the particular period that began at the time it was created and ends at the particular time, would be non-resident if this Act were read without reference to subsection (1) as that subsection read in its application to taxation years that include December 31, 2000,

(ii) that was created exclusively for charitable purposes and has been operated, throughout the particular period, exclusively for charitable purposes,

(iii) if the particular time is more than 24 months after the day on which the trust was created, in respect of which, there is at the particular time a group of at least 20 persons (other than trusts) each of whom at the particular time

(A) is a contributor to the trust,

(B) exists, and

(C) deals with each of the others in the group at arm's length,

(iv) the income of which (determined in accordance with the laws described in subparagraph (v)) for each of its taxation years that ends at or before the particular time would, if the income were not distributed and the laws described in subparagraph (v) did not apply, be subject to an income or profits tax in the country in which it was resident in each of those taxation years, and

- (v) that was, for each of those taxation years, exempt under the laws of the country in which it was resident from the payment of income or profits tax to the government of that country in recognition of the charitable purposes for which the trust is operated;
- (e) a non-resident trust that, throughout the trust's taxation year that includes the particular time, is a trust governed by an employees profit sharing plan, a retirement compensation arrangement or a foreign retirement arrangement;
- (f) a non-resident trust, if
 - (i) throughout the particular period that began when it was created and ends at the particular time it has been operated exclusively for the purpose of administering or providing employee benefits,
 - (ii) throughout its taxation year that includes the particular time
 - (A) the trust is a trust governed by an employee benefit plan or is a trust (referred to in this paragraph as the "specified trust") described in paragraph (a.1) of the definition "trust" in subsection 108(1), and
 - (B) the plan or the specified trust is maintained for the benefit of natural persons
 - (I) the majority of whom are non-resident, and
 - (II) all or substantially all of whom are or were employed by one entity or by two or more entities each of which is related to each other,
 - (iii) either
 - (A) at all times on or after ANNOUNCEMENT DATE the trust holds no restricted property, or
 - (B) the trust
 - (I) throughout its taxation year that includes the particular time holds no restricted property, and
 - (II) throughout the particular period that began when it was created and ends at the particular time
 - 1. held cash, or shares of the capital stock of one or more corporations that is an entity referred to in clause (ii)(B)(II), the value of which at each time in the trust's taxation year that includes the particular time represents all or substantially all of the value of its property at each such time, and
 - 2. has been governed by terms that provide, in respect of each individual who is a beneficiary under the trust and was resident in Canada at any time while employed by one of those corporations, for a transfer of property to be made by the trust to the individual in satisfaction of a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the individual as a beneficiary under the trust only on or after the satisfaction of the conditions, if any, attached to that right, and

- (iv) the plan or the specified trust provides no benefits, other than benefits in respect of
 - (A) services rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered,
 - (B) services rendered to an employer by an employee of the employer, other than services that were primarily
 - (I) rendered in Canada,
 - (II) rendered in connection with a business carried on by the employer in Canada, or
 - (III) a combination of services described in subclauses (I) and (II),
 - (C) services rendered to an employer by an employee of the employer, in a particular calendar month where
 - (I) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and
 - (II) the employee became a member of, or a beneficiary under, the plan or the specified trust (or a similar plan or specified trust for which the plan or the specified trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada, or
 - (D) any combination of services described by clauses (A) to (C);
- (g) a non-resident trust (other than a prescribed trust or a trust described in paragraph (a.1) of the definition “trust” in subsection 108(1)) that, throughout the particular period that began when it was created and ends at the particular time,
 - (i) has been resident in a country (other than Canada) the laws of which impose an income or profits tax, and been exempt, under the laws of that country, from the payment of income tax and profits tax to the government of that country in recognition of the purposes for which the trust is operated, and
 - (ii) either
 - (A) has been operated exclusively for the purpose of administering or providing superannuation or pension benefits that are primarily in respect of services rendered, outside Canada, by non-resident natural persons, or
 - (B) has
 - (I) been operated exclusively for the purpose of administering or providing retirement benefits in respect of a particular natural person who is, at the particular time, a resident contributor, and
 - (II) received no contributions other than contributions made by, or on behalf of, the particular natural person when the particular natural person was non-resident;

(h) a non-resident trust that is, at the particular time, an eligible trust under which

(i) the only beneficiaries that may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are entities that are, at the particular time, qualifying investors in respect of the trust, and

(ii) either

(A) the following conditions are met:

(I) there are at least 150 qualifying investors in respect of the trust each of whose specified fixed interests in the trust have at the particular time a fair market value of at least \$500, and

(II) where the total fair market value at the particular time of the interests, of any class of specified fixed interests in the trust, held by a resident contributor to the trust or by any other entity with whom the resident contributor does not deal at arm's length is more than 10% of the total fair market value of interests of that class, it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that that resident contributor is a specified contributor to the trust, or

(B) the following conditions are met:

(I) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister),

(II) it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that each resident contributor (other than an indirect contributor) to the trust at the particular time is a specified contributor to the trust at the particular time, and

(III) at no time in a taxation year of the trust that begins after ANNOUNCEMENT DATE and that includes the particular time does the trust hold restricted property; or

(i) a trust that is, at the particular time, a prescribed trust or included in a prescribed class of trusts.

“exempt
service”
« service
exempté »

“exempt service” means a service rendered at any time by an entity (referred to in this definition as the “service provider”) to, for or on behalf of, another entity (referred to in this definition as a “recipient”) if

(a) the recipient is at that time a trust and the service relates to the administration of the trust; or

(b) the following conditions apply in respect of the service, namely,

- (i) the service is rendered in the service provider's capacity at that time as an employee or agent of the recipient,
- (ii) in exchange for the service, the recipient transfers or loans property or becomes obligated to transfer or loan property, and
- (iii) it is reasonable to conclude
 - (A) having regard only to the service and the exchange, that the service provider would have been willing to carry out the service if the service provider had dealt at arm's length with the recipient, and
 - (B) that the terms and conditions, and circumstances, under which the service was provided would have been acceptable to the service provider if the service provider had dealt at arm's length with the recipient.

"exempt taxpayer"
« contribuable exempté »

"exempt taxpayer", for a taxation year of the taxpayer, means

- (a) a person whose taxable income for the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)); and
- (b) an eligible trust that is resident in Canada at the end of the taxation year and under which
 - (i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors in respect of the trust, and
 - (ii) each such beneficiary at each time in the taxation year is a person whose taxable income, for the period that includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)).

"indirect contributor"
« contribuant indirect »

"indirect contributor", to a particular trust at any time, means an entity that is at that time a contributor to the particular trust, if

- (a) the entity would not at that time be a contributor to the particular trust if this section were read without reference to paragraph (2)(n);
- (b) paragraph (2)(n) applies to the entity because another trust made a contribution to the particular trust; and
- (c) the other trust is at that time
 - (i) an exempt taxpayer (determined without reference to subparagraph (b)(ii) of the definition "exempt taxpayer" in this subsection),
 - (ii) a qualifying investor in respect of the particular trust, and

(iii) a specified contributor to the particular trust.

“non-resident time”
« *moment de non-résidence* »

“non-resident time”, of an entity in respect of a contribution to a trust and a particular time, means a time (referred to in this definition as the “contribution time”) at which the entity made a contribution to a trust that is before the particular time and at which the entity was non-resident, where the entity was non-resident or not in existence throughout the period that began 60 months before the contribution time (or, if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time) and ends at the earliest of

- (a) the time that is 60 months after the contribution time,
- (b) if the entity is an individual, the date of death of the individual, and
- (c) the particular time.

“promoter”
« *promoteur* »

“promoter”, of a trust at any time, means an entity that on or before that time establishes, organizes or substantially reorganizes the undertakings of the trust.

“qualifying investor”
« *investisseur admissible* »

“qualifying investor”, in respect of a trust at a particular time, means an entity

- (a) that is at the particular time a beneficiary (in this definition, determined without reference to subsection 248(25)) under the trust; and
- (b) whose only interests as a beneficiary under the trust are, at all times that the interests exist during the trust’s taxation year that includes the particular time, specified fixed interests of the entity in the trust.

“resident beneficiary”
« *bénéficiaire résident* »

“resident beneficiary”, at any time under a particular trust, means an entity (other than an entity that is at that time a specified charity, or a successor beneficiary, in respect of the particular trust) that is, at that time, a beneficiary under the particular trust where, at that time

- (a) the entity is resident in Canada; and
- (b) there is a connected contributor to the particular trust.

“resident contributor”
« *contribuant résident* »

“resident contributor”, to a particular trust at any time, means an entity that is, at that time, resident in Canada and a contributor to the particular trust, but does not include

- (a) an individual (other than a trust) who has not, at that time, been resident in Canada for a period of, or periods the total of which is, more than 60 months (other than an individual who, before that time, was never non-resident); or
- (b) an individual (other than a trust), if
 - (i) the particular trust is an *inter vivos* trust that was created before 1960 by a person who was non-resident when the trust was created, and
 - (ii) the individual has not, after 1959, made a contribution to the particular trust.

“restricted
property”
« bien
d’exception »

“restricted property” means

- (a) a particular share (or a particular right to acquire a share) of the capital stock of a particular closely-held corporation if the particular share (or the particular right), or a property for which the particular share (or the particular right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property;
- (b) an indebtedness (or a right to acquire an indebtedness) owing by another entity if
 - (i) the other entity is a closely-held corporation,
 - (ii) the indebtedness (or the right), or a property for which the indebtedness (or the right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property, and
 - (iii) the amount of any payment under a right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness, or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties of the other entity (or an entity with which the other entity does not deal at arm’s length):
 - (A) the fair market value of the property, production from the property or use of the property,
 - (B) gains or profits from the disposition of the property,
 - (C) income from the property, profits from the property, revenue from the property or cash flow from the property, or
 - (D) any other criterion similar to a criterion referred to in any of clauses (A) to (C); and
- (c) any property (other than excluded property) the fair market value of which is derived in whole or in part, directly or indirectly, from a particular share, an indebtedness or a right described in paragraph (a) or (b).

“specified
charity”
« organisme
de
bienfaisance
déterminé »

“specified charity”, in respect of a trust at any particular time, is any person (referred to in this definition as the “charity”) that at the particular time is a person described in any of paragraphs (a) to (e) and (g.1) of the definition “total charitable gifts” in subsection 118.1(1) other than

(a) a charity that does not, at the particular time, deal at arm's length with a specified entity in respect of the trust, and

(b) a charity that did not, at any specified prior time, deal at arm's length with a specified entity in respect of the trust,

where

(c) "specified prior time" in respect of a charity means any time, before the particular time, at which

(i) an amount was payable to the charity as a beneficiary under the trust,

(ii) an amount was received by the charity on the disposition of all or part of its interest as a beneficiary under the trust, or

(iii) a benefit was received or enjoyed by the charity from or under the trust, and

(d) "specified entity" in respect of a trust at any time means

(i) an entity that is at that time

(A) a beneficiary under the trust,

(B) a contributor to the trust,

(C) a person related to a contributor to the trust,

(D) a trustee of the trust,

(E) an entity that could reasonably be considered to have influence over the operation of the trust or the enforcement of its terms, or

(F) an entity that could reasonably be considered to have influence over the selection or appointment of an entity referred to in clause (A), (D) or (E), or

(ii) any group of entities at least one of which is described in subparagraph (i).

"specified contributor"
« contribuant déterminé »

"specified contributor", to a trust at a particular time in a taxation year of a particular entity, means the particular entity, if

(a) the particular entity is, at the particular time, both a contributor to the trust and a beneficiary (in this definition, other than in clause (d)(ii)(B), determined without reference to subsection 248(25)) under the trust;

(b) at all times, after February 16, 1999 and on or before the particular time, when it is a beneficiary under the trust, the particular entity's interest as a beneficiary under the trust is or would, if the definition "specified fixed interest" applied at those times, have been a specified fixed interest of the particular entity in the trust;

(c) it is reasonable to conclude that, at no time that is after February 16, 1999 and on or before the particular time, has

(i) the particular entity made a contribution of restricted property to the trust, or

(ii) another entity made a contribution of restricted property to the trust when that other entity was not dealing at arm's length with the particular entity; and

(d) where the particular entity is, at any time that is after February 16, 1999 and on or before the particular time, a beneficiary under the trust

(i) either

(A) a prescribed form has been filed with the Minister by or on behalf of the particular entity on or before the particular entity's filing-due date for that taxation year (or a later date that is acceptable to the Minister), or

(B) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and

(ii) unless the particular entity is an exempt taxpayer for the taxation year, with respect to each particular contribution made after February 16, 1999 and on before the particular time by the particular entity to the trust, it is reasonable to conclude that

(A) no consideration was received (other than property received by the particular entity that is the particular entity's interest as a beneficiary under the trust),

(B) none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution is the acquisition at any time by any entity (other than the particular entity) of an interest as a beneficiary under the trust, and

(C) the fair market value of the particular contribution is equal to the fair market value, at the time of the particular contribution, of the particular entity's interest as a beneficiary under the trust acquired as a result of the particular contribution.

"specified controlled foreign affiliate"
« société étrangère affiliée contrôlée déterminée »

"specified controlled foreign affiliate", of a particular entity at any time, means an entity that would, at that time, be a controlled foreign affiliate of the particular entity if the particular entity were resident in Canada at that time.

"specified fixed interest"
« participation fixe désignée »

"specified fixed interest", at any time of an entity in a trust, means an interest of the entity as a beneficiary under the trust if

(a) the interest includes, at that time, rights of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income and capital of the trust;

(b) the interest was issued by the trust, at or before that time, to an entity, in circumstances that are described by subparagraph (2)(g)(ii);

	<p>(c) the only manner in which any part of the interest may cease to be the entity's is by way of a transfer (determined as if subsection (2) were read only with reference to clauses (2)(m)(ii)(B) and (D)) of that part by the entity, which transfer is a disposition (determined without reference to paragraph (i) of the definition "disposition" in subsection 248(1) and paragraph 248(8)(c)) by the entity of that part; and</p> <p>(d) no amount of income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.</p>
<p>"specified party" « tiers déterminé »</p>	<p>"specified party", in respect of a particular entity at any time, means an entity that is at that time</p> <p>(a) an individual who is a spouse or common-law partner of the particular entity;</p> <p>(b) a specified controlled foreign affiliate of</p> <p>(i) the particular entity, or</p> <p>(ii) if the particular entity is an individual, a spouse or common-law partner of the individual;</p> <p>(c) an entity for which it is reasonable to conclude that the benefit referred to in subparagraph (8)(a)(iii) was conferred</p> <p>(i) in contemplation of the entity becoming after that time a specified controlled foreign affiliate of an entity referred to in subparagraph (b)(i) or (ii), or</p> <p>(ii) to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3) with respect to the particular entity; or</p> <p>(d) a corporation in which the particular entity is a shareholder, if</p> <p>(i) the corporation is on or before that time beneficially interested in a trust, and</p> <p>(ii) the particular entity is a beneficiary under the trust solely because of the application of paragraph (b) of the definition "beneficiary" in this subsection to the particular entity in respect of the corporation.</p>
<p>"specified property" « bien déterminé »</p>	<p>"specified property" means</p> <p>(a) a share of the capital stock of a corporation;</p> <p>(b) an interest as a beneficiary under a trust;</p> <p>(c) an interest in a partnership;</p> <p>(d) an interest in any other entity;</p> <p>(e) a right to acquire property described in any of paragraphs (a) to (d); and</p>

	(f) any other property deriving its value primarily from property described in any of paragraphs (a) to (e).
“specified share” « action déterminée »	“specified share” means a share of the capital stock of a corporation other than a share that is prescribed for the purpose of paragraph 110(1)(d).
“specified time” « moment déterminé »	<p>“specified time”, in respect of a trust for a taxation year of the trust, means</p> <p>(a) if the trust exists at the end of the taxation year, the time that is the end of that taxation year; and</p> <p>(b) in any other case, the time in that taxation year that is immediately before the time at which the trust ceases to exist.</p>
“successor beneficiary” « bénéficiaire remplaçant »	<p>“successor beneficiary”, at any time in respect of a trust, means an entity that is a beneficiary under the trust solely because of a right of the beneficiary to receive any of the trust’s income or capital, if under that right the entity may so receive that income or capital only on or after the death after that time of an individual who, at that time, is alive and</p> <p>(a) is a contributor to the trust;</p> <p>(b) is related to a contributor to the trust; or</p> <p>(c) would have been related to a contributor to the trust if every individual who was alive before that time were alive at that time.</p>
“trust” « fiducie »	“trust” includes, for greater certainty, an estate that arose on and as a consequence of the death of an individual.
Rules of application	<p>(2) In this section,</p> <p>(a) an entity is deemed to have transferred, at any time, a property to a trust if</p> <p>(i) at that time it transfers or loans property (other than by way of an arm’s length transfer or a transfer or loan to which paragraph (c) applies) to another entity, and</p> <p>(ii) because of that transfer or loan</p> <p>(A) the fair market value of one or more properties held by the trust increases at that time, or</p> <p>(B) a liability or potential liability of the trust decreases at that time;</p> <p>(b) the fair market value at any time of a property deemed by paragraph (a) to be transferred at that time is deemed to be the amount of the absolute value of the increase or decrease, as the case may be, referred to in subparagraph (a)(ii) in respect of the property;</p> <p>(c) an entity is deemed to have transferred, at any time, a property to a trust if</p> <p>(i) at that time it transfers or loans property (other than by way of an arm’s length transfer) to another entity, and</p>

- (ii) at or after that time, the trust holds property the fair market value of which is derived in whole or in part, directly or indirectly, from property held by the other entity;
- (d) the fair market value at any time of a property deemed by paragraph (c) to be transferred at that time is deemed to be the fair market value of the property referred to in subparagraph (c)(i);
- (e) if, at any time, a particular entity has given a guarantee on behalf of, or has provided any other financial assistance to, another entity,
 - (i) the particular entity is deemed to have transferred, at that time, property to that other entity, and
 - (ii) the property, if any, transferred to the particular entity from the other entity in exchange for the guarantee or other financial assistance is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;
- (f) if, at any time after June 22, 2000, a particular entity renders any service (other than an exempt service) to, for or on behalf of, another entity,
 - (i) the particular entity is deemed to have transferred, at that time, property to that other entity, and
 - (ii) the property, if any, transferred to the particular entity from the other entity in exchange for the service is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;
- (g) each of the following acquisitions of property by a particular entity is deemed to be a transfer of the property, at the time of the acquisition of the property, to the particular entity from the entity from which the property was acquired, namely the acquisition by the particular entity of
 - (i) a share of the capital stock of a corporation from the corporation,
 - (ii) an interest as a beneficiary under a trust (otherwise than from a beneficiary under the trust),
 - (iii) an interest in a partnership (otherwise than from a member of the partnership),
 - (iv) an interest in an entity that is not a corporation, partnership or trust (otherwise than from an entity having an interest in the entity),
 - (v) a debt owing by an entity from the entity, and
 - (vi) a right (granted after June 22, 2000 by the entity from which the right was acquired) to acquire or to be loaned property;
- (h) the fair market value at any time of a property deemed by subparagraph (e)(i) or (f)(i) to have been transferred at that time is deemed to be the fair market value, at that time, of the assistance or service, as the case may be, to which the property relates;

(i) a particular entity that at any time becomes obligated to do an act that would, if done, constitute the transfer or loan of a property to another entity is deemed to have become obligated at that time to transfer or loan, as the case may be, property to that other entity;

(j) in applying at any time the definition “non-resident time”, if a trust acquires property of an individual as a consequence of the death of the individual, the individual is deemed to have transferred the property to the trust immediately before the individual’s death;

(k) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the “specified entity”) if

(i) the particular entity transfers or loans property at that time to another entity,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity, and

(iii) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize the liability, of any entity, under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3);

(l) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the “specified entity”) if

(i) the particular entity transfers or loans property at that time to another entity,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity,

(iii) that time is not, or would not be, if the transfer or loan were a contribution of the specified entity, a non-resident time of the specified entity, and

(iv) either

(A) the particular entity is, at that time, an entity that is a controlled foreign affiliate of the specified entity, or would at that time be a controlled foreign affiliate of the specified entity if the specified entity were at that time resident in Canada, or

(B) it is reasonable to conclude that the transfer or loan was made in contemplation of the particular entity becoming after that time a particular entity described in clause (A);

(m) a particular entity is deemed to have transferred, at a particular time, a particular property or particular part of it, as the case may be, to a second entity if

(i) the particular property is a share of the capital stock of a corporation held at the particular time by the particular entity, and as consideration for the disposition at or before the particular time of the share, the particular entity received at the particular time (or became entitled at the particular time to receive) from the corporation a share of the capital stock of the corporation, or

(ii) the particular property (or property for which the particular property is substituted property) was acquired, before the particular time, from the second entity by any entity, in circumstances that are described by any of subparagraphs (g)(i) to (vi) (or would be so described if it applied at the time of that acquisition) and at the particular time,

(A) the terms or conditions of the particular property change,

(B) the second entity redeems, acquires or cancels the particular property or the particular part of it,

(C) where the particular property is a debt owing by the second entity, the debt or the particular part of it is settled or cancelled, or

(D) where the particular property is a right to acquire or to be loaned property, the particular entity exercises the right;

(n) a contribution made at any time by a particular trust to another trust is deemed to have been made at that time jointly by the particular trust and by each entity that is at that time a contributor to the particular trust;

(o) a contribution made at any time by a particular partnership to a trust is deemed to have been made at that time jointly by the particular partnership and by each entity that is at that time a member of the particular partnership (other than a member of the particular partnership where the liability of the member as a member of the particular partnership is limited by operation of any law governing the partnership arrangement);

(p) subject to paragraph (q) and subsection (9), the amount of a contribution to a trust at the time it was made is deemed to be the fair market value, at that time, of the property that was the subject of the contribution;

(q) an entity that at any time acquires a specified fixed interest in a trust (or a right, issued by the trust, to acquire a specified fixed interest in the trust) from another entity (other than the trust that issued the specified fixed interest or the right) is deemed to have made at that time a contribution to the trust and the amount of the contribution is deemed to be equal to the fair market value at that time of the specified fixed interest or right, as the case may be;

(r) a particular entity that has acquired a specified fixed interest in a trust as a consequence of making a contribution to the trust — or that has made a contribution to the trust as a consequence of having acquired a specified fixed interest in the trust or a right described in paragraph (q) — is, for the purpose of applying this section at any time after the time that the particular entity transfers the specified fixed interest or the right, as the case may be, to another entity (which transfer is referred to in this paragraph as the “sale”), deemed not to have made the contribution in respect of the specified fixed interest, or right, that is the subject of the sale where

(i) immediately before the sale, the particular entity would be a specified contributor to the trust if

- (A) the definition “specified contributor” were read without reference to subparagraph (d)(i) of that definition,
- (B) in applying paragraph (b) of that definition, a specified fixed interest included the right, and
- (C) that definition applied immediately before the sale,
- (ii) in exchange for the sale, the other entity transfers or loans, or becomes obligated to transfer or loan, property (which property is referred to in subparagraph (iii) as the “consideration”) to the particular entity, and
- (iii) it is reasonable to conclude
 - (A) having regard only to the sale and the consideration that the particular entity would have been willing to make the sale if the particular entity dealt at arm’s length with the other entity, and
 - (B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the particular entity if the particular entity dealt at arm’s length with the other entity;
- (s) a transfer to a trust by a particular entity is deemed not to be, at a particular time, a contribution to the trust if
 - (i) the particular entity has transferred, at or before the particular time and in the ordinary course of business of the particular entity, property to the trust,
 - (ii) the transfer is not an arm’s length transfer, but would be an arm’s length transfer if the definition “arm’s length transfer” were read without reference to paragraph (a), and subparagraphs (b)(i) to (iii) and (v) to (viii), of that definition,
 - (iii) it is reasonable to conclude that the particular entity was the only entity that acquired, in respect of the transfer, an interest as a beneficiary under the trust,
 - (iv) the particular entity was required, under the securities law of a country or of a political subdivision of the country in respect of the issuance by the trust of interests as a beneficiary under the trust, to acquire an interest because of the particular entity’s status at the time of the transfer as a manager or promoter of the trust,
 - (v) at the particular time the trust is not an exempt foreign trust, but would be at that time an exempt foreign trust if it had not made an election under paragraph (g) of the definition “eligible trust”, and
 - (vi) the particular time is before the earliest of
 - (A) the first time at which the trust becomes an exempt foreign trust,
 - (B) the first time at which the particular entity ceases to be a manager or promoter of the trust, and
 - (C) the time that is 24 months after the first time at which the total fair market value of consideration received by the trust in exchange for interests as a beneficiary (other

than the particular entity's interest referred to in subparagraph (iii)) under the trust is greater than \$500,000;

(*t*) a transfer, by a Canadian corporation of particular property, that is at a particular time a contribution by the Canadian corporation to a trust, is deemed not to be, after the particular time, a contribution by the Canadian corporation to the trust if

(i) either

(A) the trust acquired the particular property before the particular time from the Canadian corporation in circumstances described in subparagraph (g)(i) or (v), or

(B) another entity acquired property before the particular time from the Canadian corporation in circumstances described in subparagraph (g)(i) or (v) and because of that acquisition the Canadian corporation was deemed by paragraph (c) to have transferred the particular property to the trust,

(ii) as a result of a transfer (which transfer is referred to in this paragraph as the "sale") at the particular time by any entity (referred to in this paragraph as the "seller") to another entity (referred to in this paragraph as the "buyer") the trust ceases to hold property that is shares of the capital stock of, or debt issued by, the Canadian corporation or that is property the fair market value of which is derived in whole or in part, directly or indirectly, from shares of the capital stock of, or debt issued by, the Canadian corporation,

(iii) the buyer deals at arm's length immediately before the particular time with the Canadian corporation, the trust and the seller,

(iv) in exchange for the sale, the buyer transfers or becomes obligated to transfer property (which property is referred to in this paragraph as the "consideration"), to the seller, and

(v) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the seller would have been willing to make the sale if the seller dealt at arm's length with the buyer,

(B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the seller if the seller dealt at arm's length with the buyer, and

(C) that the value of the consideration is not, at or after the particular time, determined in whole or in part, directly or indirectly, by reference to shares of the capital stock of, or debt issued by, the Canadian corporation; and

(*u*) a transfer, before October 11, 2002, to a personal trust by an individual (other than a trust) of particular property is deemed not to be a contribution of the particular property by the individual to the trust if

(i) the individual identifies the trust in prescribed form filed with the Minister on or before the individual's filing-due date for the individual's 2003 taxation year (or a later date that is acceptable to the Minister), and

(ii) the Minister is satisfied that

(A) the individual (and any entity not dealing at any time at arm's length with the individual) has never loaned or transferred, directly or indirectly, restricted property to the trust,

(B) in respect of each contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust, none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution was to permit or facilitate, directly or indirectly, the conferral at any time of a benefit (for greater certainty, including an interest as a beneficiary under the trust) on

(I) the individual,

(II) a descendant of the individual, or

(III) any entity with whom the individual or descendant does not, at any time, deal at arm's length, and

(C) the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust does not exceed the greater of

(I) 1% of the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made to the trust before October 11, 2002, and

(II) \$500.

(3) Where at a specified time in a particular taxation year of a trust (other than a trust that is, at that time, an exempt foreign trust) the trust is non-resident (determined without reference to this subsection) and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust,

(a) the trust is deemed to be resident in Canada throughout the particular taxation year for the purposes of

(i) section 2,

(ii) computing the trust's income for the particular taxation year,

(iii) applying subsections 104(13.1) to (29) and 107(2.1), in respect of the trust and a beneficiary under the trust,

(iv) applying clause 53(2)(h)(i.1)(B), the definition “non-resident entity” in subsection 94.1(1), subsection 107(2.002) and section 115, in respect of a beneficiary under the trust,

(v) subsection 111(9),

(vi) determining an obligation of the trust to file a return under section 233.3 or 233.4,

(vii) determining the rights and obligations of the trust under Divisions I and J,

(viii) determining the liability of the trust for tax under Part I, and under Part XIII on amounts paid or credited (in this paragraph having the meaning assigned by Part XIII) to the trust,

(ix) determining the liability of a non-resident person for tax under Part XIII on an amount (other than an exempt amount) paid or credited after 2003 by the trust to the non-resident person, and

(x) determining whether a foreign affiliate of a taxpayer (other than the trust) is a controlled foreign affiliate of the taxpayer;

(b) in applying subsections 20(11) and (12) and section 126,

(i) in determining the non-business income tax (as defined by subsection 126(7)) paid by the trust for the particular taxation year to the government of a country other than Canada no amount shall be included to the extent that it can reasonably be regarded as attributable to income from a source in Canada, and

(ii) if the trust elects, by notifying the Minister in writing in its return of income for the particular taxation year, to have this paragraph apply,

(A) the trust’s income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada) is deemed

(I) to be income of the trust from sources (other than a business carried on by the trust) in the particular country (other than Canada) in which the trust is resident (determined without reference to this subsection), and

(II) not to be from any other source, and

(B) in determining the income or profits tax paid by the trust for the particular taxation year to the government of the particular country there shall be included only the total of all amounts each of which is the amount of an income or profits tax that was paid by the trust for the particular taxation year to the government of a country (other than Canada) and that can reasonably be regarded as a tax paid on the trust’s income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada);

(c) if the trust was non-resident throughout its taxation year (referred to in this paragraph as the “preceding year”) immediately preceding the particular taxation year, the trust is deemed to have

- (i) immediately before the end of the preceding year, disposed of each property (other than property described in any of subparagraphs 128.1(1)(b)(i) to (iv)) held by the trust at that time for proceeds of disposition equal to its fair market value at that time, and
- (ii) at the beginning of the particular taxation year, acquired each of those properties so disposed of at a cost equal to its proceeds of disposition;

(d) each entity that at any time in the particular taxation year is a resident contributor to the trust or a resident beneficiary under the trust

- (i) has jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the particular taxation year under Divisions I and J, and
- (ii) is subject to Part XV in respect of those rights and obligations; and

(e) each entity that at any time in the particular taxation year is a beneficiary under the trust and was a person from whom an amount would be recoverable at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) in respect of the trust if the entity had received before 2003 amounts described under paragraph (2)(a) or (b) in respect of the trust (as those paragraphs read in their application to taxation years that began before 2003)

- (i) has, to the extent of the entity’s recovery limit for the year, jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the taxation years, of the trust, that began before 2003 under Divisions I and J, and
- (ii) is, to the extent of the entity’s recovery limit for the year, subject to Part XV in respect of those rights and obligations.

Excluded provisions

(4) Paragraph (3)(a) does not apply to deem a trust to be resident in Canada for the purposes of

- (a) the definitions “arm’s length transfer”, “exempt foreign trust” and “exempt taxpayer” in subsection (1);
- (b) paragraph (14)(b), subsections 70(6) and 73(1), the definition “Canadian partnership” in subsection 102(1), paragraph 107.4(1)(c) and paragraph (a) of the definition “mutual fund trust” in subsection 132(6);
- (c) determining the liability of a person (other than the trust) that would arise under section 215;
- (d) determining whether, in applying subsection 128.1(1), the trust becomes resident in Canada at a particular time;

	<p>(e) determining whether, in applying subsection 128.1(4), the trust ceases to be resident in Canada at a particular time;</p> <p>(f) subparagraph (f)(i) of the definition “disposition” in subsection 248(1);</p> <p>(g) determining whether subsection 107(5) applies to a distribution on or after ANNOUNCEMENT DATE of property to the trust; and</p> <p>(h) determining whether subsection 75(2) applies to deem an amount to be an income, loss, taxable capital gain or allowable capital loss of the trust.</p>
Deemed cessation of residence	<p>(5) A trust is deemed to cease to be resident in Canada at the earliest time at which there is neither a resident contributor to the trust nor a resident beneficiary under the trust in a period that would, if this Act were read without reference to subsection 128.1(4), be a taxation year of the trust</p> <p>(a) that immediately follows a taxation year of the trust throughout which it was resident in Canada;</p> <p>(b) at the beginning of which there was a resident contributor to the trust or a resident beneficiary under the trust; and</p> <p>(c) at the end of which the trust is non-resident.</p>
Becoming or ceasing to be an exempt foreign trust	<p>(6) If at any time a trust becomes or ceases to be an exempt foreign trust (otherwise than because of becoming resident in Canada),</p> <p>(a) its taxation year that would otherwise include that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to begin at that time; and</p> <p>(b) for the purpose of determining the trust’s fiscal period after that time, the trust is deemed not to have established a fiscal period before that time.</p>
Limit to amount recoverable	<p>(7) The maximum amount recoverable under the provisions referred to in paragraph (3)(d) at any particular time from an entity in respect of a trust (other than an entity that is deemed, by subsection (12) or (13), to be a contributor or a resident contributor to the trust) and a particular taxation year of the trust is the entity’s recovery limit at the particular time in respect of the trust and the particular year if</p> <p>(a) either</p> <p>(i) the entity is liable under a provision referred to in paragraph (3)(d) in respect of the trust and the particular year solely because the entity was a resident beneficiary under the trust at a specified time in respect of the trust in the particular year, or</p> <p>(ii) at a specified time in respect of the trust in the particular year, the total of all amounts each of which is the amount, at the time it was made, of a contribution to the trust made before the specified time by the entity, or by another entity not dealing at arm’s length with the entity, is not more than the greater of</p>

(A) \$10,000 and

(B) 10% of the total of all amounts each of which was the amount, at the time it was made, of a contribution made to the trust before the specified time;

(b) except where the total determined in subparagraph (a)(ii) in respect of the entity and all entities not dealing at arm's length with it is \$10,000 or less, the entity has filed on a timely basis under section 233.2 all information returns required to be filed by it before the particular time in respect of the trust (or on any later day that is acceptable to the Minister); and

(c) it is reasonable to conclude that for each transaction or event that occurred before the end of the particular year at the direction of, or with the acquiescence of, the entity

(i) none of the purposes of the transaction or event was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust, and

(ii) the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust.

Recovery limit

(8) The recovery limit referred to in paragraph (3)(e) and subsection (7) at a particular time of a particular entity in respect of a trust and a particular taxation year of the trust is the amount, if any, by which the greater of

(a) the total of all amounts each of which is

(i) an amount received or receivable after 2000 and before the particular time

(A) by the particular entity on the disposition of all or part of the particular entity's interest as a beneficiary under the trust, or

(B) by another entity (that was, when the amount became receivable, a specified party in respect of the particular entity) on the disposition of all or part of the specified party's interest as a beneficiary under the trust,

(ii) an amount (other than an amount described in subparagraph (i)) made payable by the trust after 2000 and before the particular time to

(A) the particular entity because of the interest of the particular entity as a beneficiary under the trust, or

(B) another entity (that was, when the amount became payable, a specified party in respect of the particular entity) because of the interest of the specified party as a beneficiary under the trust,

(iii) an amount (other than an amount described in subparagraph (i) or (ii)) that is the fair market value of a benefit received or enjoyed, after 2000 and before the particular time, from or under the trust by

(A) the particular entity, or

(B) another entity that was, when the benefit was received or enjoyed, a specified party in respect of the particular entity, or

(iv) the maximum amount that would be recoverable from the particular entity at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) if the trust had tax payable under this Part at the end of 2002 and that tax payable exceeded the total of the amounts described in respect of the entity under paragraphs (2)(a) and (b) (as they read in their application to taxation years that began before 2003), except to the extent that the amount so recoverable is in respect of an amount that is included in the particular entity's recovery limit because of subparagraph (i) or (ii), and

(b) the total of all amounts each of which is the amount, when made, of a contribution to the trust before the particular time by the particular entity,

exceeds the total of all amounts each of which is

(c) an amount recovered before the particular time from the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003),

(d) an amount (other than an amount in respect of which this paragraph has applied in respect of any other entity) recovered before the particular time from a specified party in respect of the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003), or

(e) the amount, if any, by which the particular entity's tax payable under this Part for any taxation year in which an amount described in any of subparagraphs (a)(i) to (iii) was paid, became payable, was received, became receivable or was enjoyed by the particular entity exceeds the amount that would have been the particular entity's tax payable under this Part for that taxation year if no such amount were paid, became payable, were received, became receivable or were enjoyed by the particular entity in that taxation year.

(9) If a contribution is made at any time by an entity to a trust as a consequence of a transaction that is, or as a consequence of a series of transactions or events that includes, the transfer at that time to the trust of a specified property, the amount of the contribution at that time is deemed, for the purposes of clause (2)(u)(ii)(C), subparagraph (7)(a)(ii) and subsection (8), to be the greater of

(a) the amount, determined without reference to this subsection, of the contribution at that time, and

(b) the amount that is the greatest fair market value of the specified property, or property substituted for it, in the period that

- (i) begins immediately after that time, and
- (ii) ends at the end of the third calendar year that ends after that time.

Where contributor becomes resident in Canada within 60 months after contributing

(10) In applying this section at each specified time, in respect of a taxation year of a trust, that is before the particular time at which a contributor to the trust becomes resident in Canada within 60 months after making a contribution to the trust, the contribution is deemed to have been made at a time other than a non-resident time of the contributor if

- (a) in applying the definition “non-resident time” in subsection (1) as of each of those specified times, the contribution was made at a non-resident time of the contributor; and
- (b) in applying the definition “non-resident time” in subsection (1) immediately after the particular time, the contribution is made at a time other than a non-resident time of the contributor.

Application of ss. (12) and (13)

(11) Subsections (12) and (13) apply to a trust or an entity in respect of a trust if

(a) at any time property of a trust (referred to in this subsection and subsections (12) and (13) as the “original trust”) is transferred or loaned, directly or indirectly, in any manner, to another trust (referred to in this subsection and subsections (12) and (13) as the “transferee trust”);

(b) the original trust

(i) is deemed to be resident in Canada immediately before that time because of paragraph (3)(a),

(ii) would be deemed to be resident in Canada immediately before that time because of paragraph (3)(a) if this section were read without reference to paragraph (a) of the definition “connected contributor” in subsection (1) and paragraph (a) of the definition “resident contributor” in that subsection,

(iii) was deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that began before 2003, or

(iv) would have been deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that began before 2003 if that subsection were read in that application without reference to subclause (b)(i)(A)(III) of that subsection; and

(c) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003).

Deemed resident contributor

(12) The original trust described in subsection (11) (including a trust that has ceased to exist) is deemed to be, at and after the time of the transfer or loan referred to in that subsection,

	a resident contributor to the transferee trust for the purpose of applying this section in respect of the transferee trust.
Deemed contributor	<p>(13) An entity (including any entity that has ceased to exist) that is, at the time of the transfer or loan referred to in subsection (11), a contributor to the original trust, is deemed to be at and after that time</p> <p>(a) a contributor to the transferee trust; and</p> <p>(b) a connected contributor to the transferee trust, if at that time the entity is a connected contributor to the original trust.</p>
Restricted property — exception	<p>(14) A particular property that is, or will be, at any time held, loaned or transferred, as the case may be, by an entity is not restricted property held, loaned or transferred, as the case may be, at that time by the entity if</p> <p>(a) the particular property is a share of a specified class (as defined by subsection 256(1.1)) of the shares of the capital stock of a corporation and</p> <p>(i) the particular property was acquired, as part of a transaction or series of transactions or events, from the corporation in exchange for, or as consideration for, property that is money only, and</p> <p>(ii) no other property (other than property that is identical to the particular property) was acquired by any entity as part of that transaction or series of transactions or events; or</p> <p>(b) the particular property is identified in prescribed form, containing prescribed information, filed, by or on behalf of the entity, with the Minister on or before the entity's filing-due date (or another date that is acceptable to the Minister) for the entity's taxation year that includes that time, and</p> <p>(i) the particular property (and property, if any, for which the particular property is, or is to be, substituted property) was not, and will not be, at any time acquired, held, loaned or transferred by the entity (or any entity with whom the entity does not at any time deal at arm's length) in whole or in part for the purpose of permitting any change in the value of the property of a corporation (that is, at any time, a closely-held corporation) to accrue directly or indirectly in any manner whatever to the value of property held by a non-resident trust, and</p> <p>(ii) the Minister is satisfied that the particular property (and property, if any, for which it is, or is to be, substituted) is described by subparagraph (i).</p>
Determining arm's length dealing and related entities	(15) In determining whether an entity and another entity are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity.
Anti-avoidance — 150 entities	(16) In applying this section,

(a) if it can reasonably be considered that one of the main reasons that an entity is at any time a shareholder of a corporation is to cause the condition in paragraph (b) of the definition “closely-held corporation” in subsection (1) to be satisfied in respect of the corporation, the condition is deemed not to have been satisfied at that time in respect of the corporation;

(b) if it can reasonably be considered that one of the main reasons that an entity holds at any time an interest in a trust is to cause the condition in subclause (h)(i)(A)(I) of the definition “exempt foreign trust” in subsection (1) to be satisfied in respect of the trust, the condition is deemed not to have been satisfied at that time in respect of the trust; and

(c) if it can reasonably be considered that one of the main reasons that a person holds at any time a property is to cause the condition in paragraph (c) of the definition “excluded property” in subsection (1) to be satisfied in respect of the property or an identical property held by any person, the condition is deemed not to have been satisfied at that time in respect of the property or the identical property.

(2) Subsection (1) applies to trust taxation years that begin after 2002, except that

(a) it also applies to taxation years that begin in 2001 and 2002 of a trust if the trust was created in 2001 and elects, in writing, to have section 94 of the Act, as enacted by subsection (1), apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust’s filing-due date for the trust’s taxation year in which this Act is assented to;

(b) it also applies to taxation years that begin in 2002 of a trust if the trust was created in 2002 and elects, in writing, to have section 94 of the Act, as enacted by subsection (1), apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust’s filing-due date for the trust’s taxation year in which this Act is assented to;

(c) any election or form referred to in section 94 of the Act, as enacted by subsection (1), that would otherwise be required to be filed before 120 days after the day on which this Act is assented to is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue within 365 days after the day on which this Act is assented to;

(d) the expression “if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time” in the definition “non-resident time” in subsection 94(1) of the Act, as enacted by subsection (1), is, in respect of contributions made before June 23, 2000, to be read as the expression “if the contribution time is before June 23, 2000, 18 months before the end of the trust’s taxation year that includes the contribution time”;

(e) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph apply, in applying section 94 of the Act, as enacted by subsection (1), in respect of the trust the definition “arm’s length transfer” in

subsection 94(1) of the Act, as enacted by subsection (1), does not include a loan or other transfer of property that is identified in the election and that is made in a taxation year that begins before 2003;

(f) if a trust ceased to exist before October 31, 2003, the definition “specified time” in subsection 94(1) of the Act, as enacted by subsection (1), is to be read in respect of the trust without reference to paragraph (b) of that definition;

(g) unless a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph not apply, paragraphs (a) and (b) of the definition “closely-held corporation” in subsection 94(1) of the Act, as enacted by subsection (1), are, in respect of the trust for its taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(a) there are one or more classes of shares of its capital stock that are not a specified class within the meaning assigned by subsection 256(1.1); and

(b) it is reasonable conclude that at that time

(i) the shares of those classes (other than such a specified class) are held by at least 150 entities each of whom holds shares that have a total fair market value of at least \$500, and

(ii) the total number of issued and outstanding shares of a class (other than such a specified class) held by a particular entity or by any other entity with whom the particular entity does not deal at arm’s length is not more than 10% of the total number of the issued and outstanding shares of that class.

(h) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph apply, paragraph (f) of the definition “eligible trust” in subsection 94(1) of the Act, as enacted by subsection (1), is, in respect of the trust for its taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(f) that at or before that time was a personal trust; or

(i) subparagraph (b)(i) of the definition “exempt foreign trust” in subsection 94(1) of the Act, as enacted by subsection (1), is, for taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(i) the trust was created after the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who is a child of one of those particular individuals (which beneficiary is referred to in this paragraph as a “child beneficiary”),

(j) unless a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph not apply, paragraphs (f) and (g) of the defi-

inition “exempt foreign trust” in subsection 94(1) of the Act, as enacted by subsection (1), are, in respect of the trust for its taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(f) a non-resident trust, if throughout the trust’s taxation year that includes the particular time

(i) the trust is a trust governed by an employee benefit plan or is a trust (referred to in this paragraph as the “specified trust”) described in paragraph (a.1) of the definition “trust” in subsection 108(1),

(ii) the plan or the specified trust is maintained primarily for the benefit of non-resident individuals,

(iii) the trust holds no restricted property, and

(iv) the plan or the specified trust provides no benefits, other than benefits in respect of

(A) services rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered,

(B) services rendered to an employer by an employee of the employer, other than services that were primarily

(I) rendered in Canada,

(II) rendered in connection with a business carried on by the employer in Canada, or

(III) a combination of services described in subclauses (I) and (II),

(C) services rendered to an employer by an employee, of the employer, in a particular calendar month where

(I) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(II) the employee became a member of, or a beneficiary under, the plan or the specified trust (or a similar plan or specified trust for which the plan or the specified trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada, or

(D) any combination of services described by clauses (A) to (C);

(g) a non-resident trust that, throughout the particular period that began at the time it was created and ends at the particular time,

(i) has been operated exclusively for the purpose of administering or providing superannuation, pension, retirement or employee benefits,

(ii) has

(A) been maintained for the benefit of persons all or substantially all of whom are non-resident individuals, or

(B) been maintained for the benefit of persons

(I) the majority of whom are non-resident individuals, and

(II) all or substantially all of whom are employed by one corporation or by two or more corporations each of which is related to each other, and

(iii) has

(A) been resident in a country (other than Canada) the laws of which impose an income or profits tax, and been exempt, under the laws of that country, from the payment of income tax and profits tax to the government of that country in recognition of the purposes for which the trust is operated, or

(B) held cash or shares of the capital stock of one or more corporations referred to in subclause (ii)(B)(II) the value of which at any time in the particular period represents all or substantially all of the value of its property at that time, held no restricted property, and been governed by terms that provide, in respect of each individual who is a beneficiary under the trust and was resident in Canada at any time while employed by one of those corporations, for a transfer of property to be made by the trust to the individual in satisfaction of a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the individual as a beneficiary under the trust only on or after the satisfaction of the conditions, if any, attached to that right;

(k) the portion of subparagraph (b)(iii) of the definition “restricted property” in subsection 94(1) of the Act before clause (A), as enacted by subsection (1), is, for taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(iii) the amount of any payment (under a right to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness), or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties of the other entity (or an entity with which the other entity does not deal at arm’s length):

(l) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph apply, in applying section 94 of the Act, as enacted by subsection (1), in respect of the trust the definition “specified fixed interest” in subsection 94(1) of the Act, as enacted by subsection (1), is, for its taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

“specified fixed interest”, at any time of an entity in a trust, means a capital interest of the entity in the trust if

(a) the interest includes, at that time, a right of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income or capital of the trust;

(b) the interest was acquired, at or before that time, from the trust by any entity, in circumstances that are described by subparagraph (2)(g)(ii);

(c) no right of the entity as a beneficiary under the trust to income or capital of the trust may cease to be a right of the entity (or the entity's legal representatives) otherwise than because of

(i) a gift of that interest made by the entity, or

(ii) a transaction or event under which the entity (or the entity's legal representatives) is entitled to receive an amount equal to the fair market value, immediately before that cessation, of the right; and

(d) the trust was not at any time at or before that time a personal trust.

(m) subparagraph 94(3)(a)(x), of the Act, as enacted by subsection (1), does not apply in determining on or before ANNOUNCEMENT DATE whether a foreign affiliate is a controlled foreign affiliate of a taxpayer;

(n) paragraph 94(4)(b) of the Act, as enacted by subsection (1), is

(i) subject to subparagraph (ii), for taxation years that begin on or before ANNOUNCEMENT DATE, to be read without reference to "the definition "Canadian partnership" in subsection 102(1),", and

(ii) to be read as follows in its application to a transfer, by a trust, that occurred before February 28, 2004:

(b) subsections 70(6) and 73(1), paragraph 107.4(1)(c) other than subparagraph (i) of it and paragraph (a) of the definition "mutual fund trust" in subsection 132(6);

(o) paragraph 94(4)(f) of the Act, as enacted by subsection (1), is in its application to a transfer by a trust that occurred before February 28, 2004 to be read as follows:

(f) determining the residency of the transferee in applying subparagraph (f)(ii) of the definition "disposition" in subsection 248(1);

(p) if a trust was for its last taxation year that began before 2003 deemed by paragraph 94(1)(c) of the Act (as it read in its application to that taxation year) to be resident in Canada, paragraphs 94(4)(e) and (f) of the Act, as enacted by subsection (1), do not apply to the trust for the period that starts immediately before the end of that last taxation year and that ends immediately after the beginning of its first taxation year that begins after 2002, unless during that period a change in the trustees of the trust occurred;

(q) if subsection (1) applies to a trust for its taxation years that begin in 2001 or in 2002,

(i) paragraph 94(3)(e) of the Act, as enacted by subsection (1), subparagraph 94(8)(a)(iv) of the Act, as enacted by subsection (1), and subparagraphs 94(11)(b)(iii) and (iv) of the Act, as enacted by subsection (1), do not apply to the trust, and

(ii) paragraphs 94(8)(c) and (d) of the Act, as enacted by subsection (1), and paragraph 94(11)(c) of the Act, as enacted by subsection (1), in their application to the trust are to be read without reference to the expression “(or the application of this section as it read in its application to taxation years that began before 2003)”; and

(r) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph apply, paragraph (h) of the definition “exempt foreign trust” in subsection 94(1) of the Act, as enacted by subsection (1), is, in respect of the trust for its taxation years that begin on or before ANNOUNCEMENT DATE, to be read as follows:

(h) a non-resident trust that is, at the particular time, an eligible trust

(i) under which the interest of each beneficiary (in this subparagraph, determined without reference to subsection 248(25)) is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(A) there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least \$500, and

(B) where in respect of a class of interests as a beneficiary under the trust, the total fair market value of interests of that class held by a resident contributor or by any other entity with whom the resident contributor does not deal at arm's length is more than 10% of the total fair market value of interests of that class, it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that that resident contributor is a specified contributor to the trust, or

(ii) under which the interest of each beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if in respect of the trust

(A) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and

(B) it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that each resident contributor (other than an indirect contributor) to the trust at the particular time is a specified contributor to the trust at the particular time; or

18. (1) Section 94.1 of the Act is replaced by the following:

Foreign Investment Entities — Imputed Income

Definitions

94.1 (1) The following definitions apply in this section and sections 94.2 to 94.4.

“arm’s length interest”
« participation sans lien de dépendance »

“arm’s length interest”, at any time in respect of a taxpayer, means a particular participating interest, of the taxpayer, in a non-resident entity, if the following conditions are met:

(a) it is reasonable to conclude that there are at least 150 persons each of which holds at that time participating interests in the non-resident entity that, at that time,

(i) are identical to the particular participating interest, and

(ii) have a total fair market value of at least \$500;

(b) the total of all amounts each of which is the fair market value, at that time, of the particular participating interest (or of a participating interest in the non-resident entity that is identical to the particular participating interest and that is held, at that time, by the taxpayer or an entity or individual with whom the taxpayer does not deal at arm’s length) does not exceed 10% of the total of all amounts each of which is the fair market value, at that time, of a participating interest in the non-resident entity that is held, at that time, by any entity or individual and that is identical to the particular participating interest; and

(c) it is reasonable to conclude that participating interests in the non-resident entity that are identical to the particular participating interest

(i) can normally be acquired by and sold by members of the public in the open market, or

(ii) can be acquired from and sold to the non-resident entity by members of the public.

“beneficiary”
« bénéficiaire »

“beneficiary” has, except for the purpose of paragraph 94.2(11)(f), the meaning assigned by subsection 94(1).

“carrying value”
« valeur comptable »

“carrying value”, at any time of property of a particular entity in respect of a taxpayer, means

(a) the fair market value at that time of the property, if

(i) the particular entity is an entity (referred to in this subparagraph as the “first entity”) in which the taxpayer holds at that time a participating interest or is another entity in which the first entity holds at that time a direct or indirect interest,

(ii) the taxpayer elects, by notifying the Minister in writing in the taxpayer’s return of income for the taxpayer’s taxation year that includes that time to have this paragraph apply to all of the particular entity’s property, and

(iii) the property is valued for the purpose of the particular entity’s financial statements as of that time; and

(b) in any other case, the amount at which the property is valued for the purpose of the particular entity's financial statements as of that time.

"designated
cost"
« coût
designé »

"designated cost", to a taxpayer at any time of a participating interest held, at that time, by the taxpayer in a non-resident entity, is the amount determined by the formula

$$A + B + C + D + E + F - G$$

where

- A is the cost amount to the taxpayer of the participating interest at that time (determined without reference to subsection 47(1), paragraphs 53(1)(m) and (q) and 53(2)(g) and (g.1) and section 143.2);
- B is an amount included in respect of the participating interest because of this section in computing the taxpayer's income for a taxation year that ends after 2002 and before that time;
- C is, if the participating interest was an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the total of all amounts each of which is the amount determined, in respect of the offshore investment fund property for that last taxation year, for B, C or D is the definition "designated cost" in subsection 94.1(2) as it read in its application to that last taxation year;
- D is, if the participating interest was acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the fair market value of the participating interest at the end of that last taxation year exceeds the cost amount to the taxpayer of the participating interest at the end of that last taxation year;
- E is, if one or more particular amounts has been made available by a person to another person after the last 2002 taxation year of the non-resident entity and before that time (whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise) in circumstances in which it can reasonably be concluded that one of the main reasons for making the particular amount available to the other person was to increase the value of the participating interest, the total of all amounts each of which is the amount, if any, by which each particular amount exceeds any increase in the cost amount to the taxpayer of the participating interest because of that particular amount;
- F is, if the participating interest is acquired by the taxpayer after 2002, the amount, if any, by which the fair market value of the participating interest at the time it was so acquired exceeds the cost amount to the taxpayer of the participating interest at the time it was so acquired; and

G is, if the participating interest was last acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the cost amount to the taxpayer of the participating interest at the end of that last taxation year exceeds the fair market value of the participating interest at the end of that last taxation year.

"entity"
« entité »

"entity" includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust, but does not include a natural person.

"exempt
business"
« entreprise
exempte »

"exempt business", of an entity at any time, means a business — other than a business carried on by the entity principally with entities or individuals with whom the entity does not deal at arm's length, a business carried on by a trust that is an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1), and a business carried on by the entity as a member, of a partnership, that is not a qualifying member of the partnership, or that would not be such a qualifying member if the entity were a person — that is carried on by the entity at that time and that, throughout the period (in its taxation year that includes that time) during which the business was carried on by the entity, is

(a) carried on by the entity as a foreign bank, a trust company, a credit union, an insurance corporation or, if the entity is controlled by a taxpayer resident in Canada that is described in subparagraph 95(2.1)(a)(i), a trader or dealer in securities or commodities, the activities of which business are regulated under

(i) the laws of

(A) in the case of each country in which the business is carried on through a permanent establishment, as defined by regulation, that country, or a political subdivision of that country, and

(B) the country, or the political subdivision of a country, under whose laws the entity is governed, and any of exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued,

(ii) the laws of the country, or of a political subdivision of the country, in which country the business is principally carried on, or

(iii) the laws (referred to in clause (B) as the "regulating laws") of a country that is a member of the European Union, or a political subdivision of that country, under whose laws another corporation is governed, and any of exists, was (unless the other corporation was continued in any jurisdiction) formed or organized, or was last continued, if

(A) the entity is a corporation that is related to the other corporation, and

(B) the business is principally carried on in a country, that is a member of the European Union, the laws of which, or the laws of a political subdivision of which, recognize the regulating laws; or

(b) a business the principal purpose of which is to derive income from

- (i) the development and exploitation of Canadian resource property, of foreign resource property, of timber resource property or of any combination of them,
- (ii) the leasing or licensing of property that the entity or another entity related to the entity manufactured, produced, developed or purchased and developed,
- (iii) the leasing of machinery or equipment that is owned by the entity and that is used by the lessee principally for the purpose of manufacturing or processing goods,
- (iv) the sale of real or immovable property developed by the entity, an entity related to the entity, or a partnership of which the entity or the related entity is a qualifying member (or would be a qualifying member if the entity were a person),
- (v) the rental of real or immovable property held by the entity or a partnership of which the entity is a qualifying member (or would be a qualifying member if the entity were a person), if the management, maintenance, and other services in respect of the property are provided primarily by the employees of
 - (A) the entity,
 - (B) a corporation related to the entity,
 - (C) the partnership,
 - (D) a qualifying member (or an entity that would be a qualifying member if the entity were a person) of the partnership, or
 - (E) any combination of employers described in clauses (A) to (D), or
- (vi) a combination of businesses described in subparagraphs (iv) and (v).

“exempt
interest”
« participation
exempt »

“exempt interest”, of a taxpayer in a non-resident entity at any time, means a participating interest of the taxpayer, in the non-resident entity, if

- (a) the non-resident entity is throughout the period, in the non-resident entity’s taxation year that includes that time, during which the taxpayer held the participating interest,
 - (i) a controlled foreign affiliate of the taxpayer,
 - (ii) a qualifying entity that is a foreign affiliate (other than a controlled foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or
 - (iii) a partnership;
- (b) the taxpayer is, throughout its taxation year that includes that time, a financial institution (within the meaning assigned by subsection 142.2(1)) and the participating interest is, at that time,
 - (i) a mark-to-market property (within the meaning assigned by subsection 142.2(1)), or

- (ii) a property described in an inventory of a business of the taxpayer, which inventory is valued, in computing the taxpayer's income for that taxation year from the business, in accordance with section 1801 of the *Income Tax Regulations*;
- (c) the participating interest is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, a right
 - (i) under an agreement referred to in subsection 7(1), to acquire a share of the capital stock of the non-resident entity,
 - (ii) granted by the non-resident entity, or another entity with which the non-resident entity does not deal at arm's length, and
 - (iii) acquired by the taxpayer, at a time when the taxpayer dealt at arm's length with the entity that granted the right, solely because the taxpayer was an employee of an entity referred to in subparagraph (ii);
- (d) both
 - (i) the non-resident entity is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, an entity (other than a trust that is an exempt foreign trust because of paragraph (f) or (h) of the definition "exempt foreign trust" in subsection 94(1)) all or substantially all of the carrying value of the property of which is attributable to the carrying value of properties that are shares of the capital stock of a corporation (that is not a foreign investment entity) that employs the taxpayer or that is related to another corporation that employs the taxpayer, and
 - (ii) an amount that is all or substantially all of the non-resident entity's payable net accounting income for its taxation year that includes that time becomes payable by it to its interest holders in that taxation year, or within 120 days after the end of that taxation year, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which it became payable;
- (e) it is reasonable to conclude that the taxpayer has, at that time, no tax avoidance motive in respect of the participating interest, and
 - (i) throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,
 - (A) the participating interest is an arm's length interest of the taxpayer,
 - (B) the non-resident entity is resident in a country in which there is a prescribed stock exchange, and
 - (C) participating interests, in the non-resident entity, that are identical to the participating interest are listed on a prescribed stock exchange, or
 - (ii) both

(A) throughout that period the non-resident entity

(I) is governed by the laws of

1. a country (other than a prescribed country) with which Canada has entered into a tax treaty, or
2. a political subdivision of a country described by sub-subclause 1,

(II) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under those laws, and

(III) while it is governed by the laws of a country, or of a political subdivision of a country, is under the tax treaty with that country resident in that country, and

(B) either

(I) throughout that period the participating interest is an arm's length interest of the taxpayer, or

(II) throughout that period the non-resident entity is, under the tax treaty with the United States of America, resident in the United States of America, and throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer is resident in Canada, the taxpayer is a citizen of the United States of America and is liable for and subject to income tax in the United States of America for that taxation year because of that citizenship; or

(f) throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,

(i) the participating interest is a share of the capital stock of a corporation resident in Canada,

(ii) the participating interest would not be a participating interest, in the non-resident entity, if the definition "participating interest" were read without reference to paragraph (d) of that definition, and

(iii) the participating interest is convertible into, exchangeable for, or a right to acquire only property that, if the conversion, exchange or right were exercised by the taxpayer at that time, would be a share, of the capital stock of a non-resident corporation, that is at that time an exempt interest (determined without reference to this paragraph) of the taxpayer.

"exempt
property"
« bien
exempt »

"exempt property", of a particular entity at any time, means, in determining whether a particular taxpayer's interest in the particular entity is a participating interest in a foreign investment entity,

(a) a property, of the particular entity, that is at that time used or held principally in a business (other than a business that is at that time an investment business carried on by the particular entity or by another entity related, otherwise than by reason of a right referred to in paragraph 251(5)(b), to the particular entity) carried on by the particular entity or

another entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity;

(b) indebtedness owing by another entity (referred to in this paragraph as the “indebted entity”), if

(i) each of the particular entity and the indebted entity is, at that time,

(A) a foreign affiliate

(I) of the particular taxpayer, and

(II) in respect of which the particular taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or

(B) a foreign affiliate

(I) of another entity that is resident in Canada and of which the particular taxpayer is a controlled foreign affiliate, and

(II) in respect of which the other entity referred to in subclause (I) has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(ii) the indebtedness would be excluded property (within the meaning of the definition “excluded property” in subsection 95(1)) of the particular entity, if

(A) the taxpayer referred to in that definition were the particular taxpayer and the foreign affiliate of the taxpayer referred to in that definition were the particular entity, or

(B) the taxpayer referred to in that definition were the other entity described in subclause (i)(B)(I) and the foreign affiliate of the taxpayer referred to in that definition were the particular entity; and

(c) a particular property, if

(i) the particular property (or other property for which the particular property is substituted) was acquired by the particular entity at any time within the 36-month period that ends at the particular time (or within any longer period that ends at the particular time that the Minister considers reasonable if the particular entity applies, in writing, to the Minister within 36 months after the property was acquired by the particular entity) because the particular entity

(A) issued a debt or a participating interest in the particular entity,

(B) disposed of property used principally in a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity,

(C) disposed of a participating interest in another entity all or substantially all of the fair market value of the property of which is attributable to property used principally in a business, other than an investment business, carried on by the other entity or an

entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other entity, or

(D) accumulated income of the particular entity derived from a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, and

(ii) the issuance, disposition or accumulation referred to in subparagraph (i) was made or amassed for the purpose of

(A) acquiring property to be used principally in, or making expenditures for the purpose of earning income from, a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, or

(B) acquiring a participating interest that is a significant interest in another entity all or substantially all of the fair market value of the property of which is attributable to property used principally in a business, other than an investment business, carried on by the other entity.

“exempt taxpayer”
« contribuable exempté »

“exempt taxpayer”, for a taxation year of the taxpayer, means

(a) a person whose taxable income for a period that ends at the end of the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z));

(b) an eligible trust (in this paragraph, as defined in subsection 94(1)) that is resident in Canada at the end of the taxation year and under which

(i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors (as defined in subsection 94(1)) in respect of the trust, and

(ii) each such beneficiary at each time in the taxation year is a person whose taxable income, for the period that includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)); and

(c) an individual (other than a trust) who, before the end of the taxation year, was resident in Canada for a period of, or periods the total of which is, not more than 60 months, but not including an individual who, before the end of the taxation year, was never non-resident;

“financial statements”
« états financiers »

“financial statements”, of a particular entity for a particular taxation year of the entity and in respect of a taxpayer, means

(a) the balance sheet and the statement of income of the particular entity, if

(i) the particular entity is an entity (referred to in this subparagraph as the “first entity”) in which the taxpayer holds, in the particular taxation year, a participating interest or is another entity in which the first entity has, in the particular taxation year, a direct or indirect interest,

(ii) the taxpayer elects (in the taxpayer’s return of income for the taxpayer’s taxation year in which the particular taxation year ends) to have this paragraph apply in respect of the particular entity and the participating interest, and

(iii) that balance sheet and statement of income would be prepared in accordance with generally accepted accounting principles used in Canada for the particular year or in accordance with generally accepted accounting principles that are substantially similar to those used in Canada if those principles did not require consolidation; and

(b) in any other case, the balance sheet and statement of income of the particular entity, if that balance sheet and statement of income are prepared for the particular taxation year in accordance with generally accepted accounting principles used for the taxation year in Canada or in accordance with generally accepted accounting principles that are substantially similar to those used for the taxation year in Canada.

“foreign bank”
« banque
étrangère »

“foreign bank” has the meaning assigned by subsection 95(1).

“foreign
investment
entity”
« entité de
placement
étrangère »

“foreign investment entity”, at any time, means an entity that is, at that time, a non-resident entity unless,

(a) at the end of its taxation year that includes that time, it is an exempt foreign trust (as defined in subsection 94(1)) because of any of paragraphs (a) to (e) and (g) of that definition or because of paragraph (f) of that definition (read without reference to clause (f)(iii)(B) of that definition);

(b) at the end of that taxation year, the carrying value of all of its investment property is not greater than one-half of the carrying value of all of its property; or

(c) throughout that taxation year, its principal undertaking was the carrying on of a business that is not an investment business.

“investment
business”
« entreprise de
placement »

“investment business”, of an entity at any time, means a business (other than a business that is at that time an exempt business) carried on by the entity (including, for greater certainty, a business carried on by the entity as a member of a partnership) at that time, the principal purpose of which is to derive income or profits described in any of the following paragraphs:

(a) income (including interest, dividends, rents, royalties or any similar return on investment or any substitute for such a return) from property;

(b) income from the insurance or reinsurance of risks;

(c) income from the factoring of trade accounts receivable; or

(d) profits from the disposition of investment property.

“investment
property”
« bien de
placement »

“investment property”, of a particular entity at any time, includes property of the particular entity that is at that time

(a) a share of the capital stock of a corporation,

(b) an interest as a member of a partnership,

(c) an interest as a beneficiary under a trust,

(d) an interest in any other entity,

(e) indebtedness,

(f) an annuity,

(g) a commodity (or commodity future) purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange,

(h) real or immovable property,

(i) a Canadian resource property or a foreign resource property,

(j) currency,

(k) intellectual property within the meaning of article 2 of the Convention Establishing the World Intellectual Property Organization done at Stockholm on July 14, 1967, as amended from time to time,

(l) a derivative financial product, or

(m) an interest, an option or a right in respect of property that is investment property because of any of paragraphs (a) to (l),

but does not include

(n) except for the purpose of applying the definition “investment business” in this subsection or the definition “tracking entity” in subsection 94.2(1), property that is at that time exempt property of the particular entity,

(o) except for the purpose of applying the definition “qualifying entity”, property that is at that time

(i) a share of the capital stock of the particular entity,

(ii) a share of the capital stock of a corporation that is, throughout the period, in the particular entity’s taxation year that includes that time, during which the particular entity holds the share, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity,

(iii) an interest in a partnership that is, throughout the period, in the particular entity’s taxation year that includes that time, during which the particular entity is a member of

	<p>the partnership, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity, or</p> <p>(iv) indebtedness owing by an entity that is, throughout the period, in the particular entity's taxation year that includes that time, during which the particular entity holds the indebtedness, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity,</p> <p>(p) a commodity (referred to in this paragraph and paragraph (q) as an "exempt commodity") that is manufactured, produced, grown, extracted or processed by the particular entity or a person related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular entity, and</p> <p>(q) a commodity future in respect of an exempt commodity.</p>
<p>"net accounting income" « résultat comptable net »</p>	<p>"net accounting income", of an entity for a taxation year of the entity, means its net income, before income taxes and extraordinary items, for the year reported in its financial statements for the year.</p>
<p>"non-resident entity" « entité non-résidente »</p>	<p>"non-resident entity", at any time, means</p> <p>(a) a corporation or trust that is non-resident at that time; and</p> <p>(b) any entity (other than a corporation or trust) that at that time</p> <p>(i) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued under the laws of a country or a political subdivision of a country other than Canada, or</p> <p>(ii) is governed under the laws of a country or a political subdivision of a country other than Canada.</p>
<p>"participating interest" « participation déterminée »</p>	<p>"participating interest", of a particular entity or individual in a non-resident entity, means a property that is</p> <p>(a) if the non-resident entity is a corporation, a share of the capital stock of the corporation;</p> <p>(b) if the non-resident entity is a trust, a specified interest in the trust;</p> <p>(c) if the non-resident entity is not a corporation or trust, an interest in the non-resident entity; and</p>

(d) under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, convertible into, exchangeable for, or a right to acquire, directly or indirectly,

(i) a property described in any of paragraphs (a) to (c), or

(ii) a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of a property described in any of paragraphs (a) to (c).

“payable net accounting income”
« résultat comptable net à payer »

“payable net accounting income”, of an entity for a taxation year of the entity, means its net income, after income taxes and extraordinary items, for the year reported in its financial statements for the year.

“qualifying entity”
« entité admissible »

“qualifying entity”, in a period, means a particular entity that is a corporation or partnership all or substantially all of the carrying value of the property of which is, throughout the period, attributable to the carrying value of particular property that is, throughout the portion of the period that the particular property is property of the particular entity,

(a) property other than investment property;

(b) investment property that is a participating interest in or debt issued by another entity if, throughout the portion of the period that the participating interest or debt is property of the particular entity,

(i) the principal undertaking of the other entity is the carrying on of a business that is not an investment business, and

(ii) either

(A) the particular entity has a significant interest in the other entity, or

(B) the particular entity

(I) actively participates in or exercises significant influence over the governance or the management of that other entity, directly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the corporation) or by reason of an agreement in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity, or

(II) carries out a plan of action that it has established for the purpose of obtaining its objective of actively participating in or exercising significant influence over the governance or the management of that other entity, directly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the particular entity) or by reason of an agreement

in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity;

(c) investment property in respect of which the particular entity establishes that the property or proceeds from the disposition of the property is to be used by the particular entity for the purpose of acquiring property described in paragraph (a) or (b); or

(d) investment property that is a particular property held by the particular entity if

(i) the particular property (or other property for which the particular property is substituted property) was last acquired by the particular entity within 36 months before the end of the period (or within any greater number of months that the Minister considers reasonable if the particular entity applies, in writing, to the Minister within the 36 months after the property was acquired by the particular entity),

(ii) the particular property was so acquired by the particular entity because it

(A) issued a debt, or a participating interest in it,

(B) disposed of property described in any of paragraphs (a) to (c), or

(C) accumulated its income, and

(iii) the issuance, disposition or accumulation referred to in subparagraph (ii) was made or amassed for the purpose of acquiring property that, if owned by the particular entity, would be property described in any of paragraphs (a) to (c).

“significant
interest”
« participation
notable »

“significant interest”, of a particular entity in another entity at any particular time, means

(a) if the other entity is a corporation, a share of the capital stock of the corporation, if at the particular time the particular entity or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity holds shares of the capital stock of the corporation

(i) that would give the particular entity, or the particular entity together with those related entities, 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation if the meeting were held at the particular time, and

(ii) that have a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the corporation;

(b) if the other entity is a partnership, an interest of the particular entity as a member of the partnership, if at the particular time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds interests as a member of the partnership that have a fair market value of 25% or more of the fair market value of all membership interests in the partnership; and

(c) if the other entity is a trust, an interest as a beneficiary under the trust, where at the particular time

(i) the only beneficiaries that may for any reason receive, at any time and directly from the trust, any of the income or capital of the trust are persons that are qualifying investors (as defined in subsection 94(1)) in respect of the trust, and

(ii) the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds such interests under the trust that have a fair market value of 25% or more of the fair market value of all the interests as beneficiaries under the trust.

“specified interest”
« participation désignée »

“specified interest”, at any time of an entity or individual in a trust, means an interest of the entity or individual as a beneficiary under the trust if

(a) the trust is at that time an exempt foreign trust because of paragraph (f) or (h) of the definition “exempt foreign trust” in subsection 94(1); or

(b) the entity or individual may for any reason receive as a beneficiary under the trust, at or after that time, any of the income or capital of the trust directly from the trust, unless

(i) the entity or individual would at that time be a successor beneficiary (as defined in subsection 94(1)) under the trust if the reference in the definition “successor beneficiary” in that subsection to a contributor did not include each contributor whose total amount of contributions to the trust is 10% or less of the total of all amounts each of which was the amount, at the time it was received by the trust, of a contribution made to the trust, or

(ii) every amount of income and capital of the trust that the entity or individual may receive at or after that time depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

“specified party”
« tiers déterminé »

“specified party” in respect of a particular individual or particular entity, as the case may be, means another individual or other entity that does not deal at arm’s length with the particular individual or the particular entity, as the case may be.

“taxation year”
« année d’imposition »

“taxation year”, of a non-resident entity that is not a corporation or an individual, means

(a) in respect of a business or property of the non-resident entity for which the accounts of the non-resident entity are ordinarily made up, the period that would be determined under section 249.1 in respect of the non-resident entity if the non-resident entity were a corporation; and

(b) in any other case, a calendar year.

Rules of application

(2) For the purposes of applying this section and sections 94.2 to 94.4 in respect of a particular participating interest, in a particular non-resident entity, held by a taxpayer in a particular taxation year of the taxpayer (and in respect of any other participating interests,

in the particular non-resident entity, that are identical to the particular participating interest and that are held by the taxpayer in the particular taxation year),

(a) in determining whether the particular non-resident entity is a foreign investment entity, if the financial statements of an entity (referred to in this paragraph as the “first entity”) for a taxation year (referred to in this paragraph as the “specified year”) of the first entity reflect property, indebtedness, income or losses of another entity,

(i) the business and non-business activities for the specified year carried on by the other entity, the net accounting income for the specified year determined for the other entity from those activities, and the property and indebtedness for the specified year owned by or owed by, as the case may be, the other entity are deemed for the specified year to be carried on by, determined for, owned by or owed by, as the case may be, the first entity, and

(ii) an exempt business of the other entity at any time in the specified year is, if it is a business the activities of which are deemed by subparagraph (i) to be carried on by the first entity, deemed to be an exempt business of the first entity at that time in the specified year;

(b) generally accepted accounting principles used, for a taxation year, in the United States of America or in countries that are members of the European Union are substantially similar to those used in Canada in respect of that taxation year;

(c) in determining the designated cost to the taxpayer of the participating interest at any time in the particular taxation year,

(i) if the particular participating interest is a specified interest in a trust that is an exempt foreign trust (in this paragraph as defined by subsection 94(1)) because of paragraph (f) of that definition, the cost at that time to the taxpayer of the particular participating interest is deemed to be the greater of

(A) the cost, determined without reference to this paragraph, at that time to the taxpayer of the particular participating interest, and

(B) the total of all amounts each of which is the fair market value, immediately before it was acquired by the trust, of a property that is held by the trust at that time and that may be reasonably be considered to be held for the purpose of satisfying the rights (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the taxpayer in respect of the particular participating interest, and

(ii) if the particular participating interest is an interest in a trust that is not an exempt foreign trust, the designated cost to the taxpayer of the particular participating interest is deemed to be the greater of

(A) the designated cost, determined without reference to this paragraph, at that time to the taxpayer of the particular participating interest, and

(B) the total of all amounts each of which is

(I) the fair market value, at that time, of restricted property (in this subparagraph, within the meaning of section 94) that is held at that time by the trust and that may reasonably be considered to be held for the purpose of satisfying the rights (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) of the taxpayer in respect of the particular participating interest, or

(II) the cost, at that time, to the trust of each property (other than restricted property) that is held by the trust for the purpose of satisfying the rights (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity) of the taxpayer in respect of the particular participating interest;

(d) the reference in subsections (4) and 94.3(4) to “as income from property from a property that is the participating interest” is to be read as a reference to “as income from property from a property that is a source outside Canada that is the participating interest”, if the taxpayer is a trust and the portion of the net accounting income of the particular non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the particular non-resident entity for that last taxation year;

(e) in determining whether the principal undertaking of an entity is, in a taxation year of the entity, the carrying on of a business that is not an investment business,

(i) subject to subparagraphs (ii) and (iii), that determination is to be by reference to the facts and circumstances including the fair market value of assets used in the activities carried on, during the entity’s taxation year, by the entity, the amount of time spent by the entity’s employees in carrying out those activities, the amount of expenditures incurred by the entity in respect of those activities and the revenue derived by the entity from those activities,

(ii) subject to subparagraph (iii), where the taxpayer has, by notifying the Minister in writing in the taxpayer’s return of income for the particular taxation year, elected to have this subparagraph apply in respect of the entity, the principal undertaking of the entity for the taxation year of the entity is deemed to be the carrying on of a business that is

(A) an investment business if the total net accounting income of the entity, for the entity’s taxation year, derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is equal to or greater than the total net accounting income of the entity for the entity’s taxation year derived from businesses (other than investment businesses), and

(B) not an investment business if the total net accounting income of the entity for the entity’s taxation year derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is less than the total net accounting income of the entity for

the entity's taxation year derived from businesses (other than investment businesses) carried on by the entity in the entity's taxation year, and

(iii) if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the principal undertaking of the entity is in the entity's taxation year the carrying on of an investment business, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand, the principal undertaking of the entity is deemed to be the carrying on of an investment business;

(f) in determining whether an entity or natural person and another entity or natural person are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity;

(g) in applying subparagraph (e)(i) of the definition "exempt interest" in subsection (1), if the particular non-resident entity is not a corporation, a partnership or a trust, it is deemed not to be resident in a particular country, unless

(i) the particular country is a country other than a prescribed country,

(ii) the particular non-resident entity is governed, and any of exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under the laws of the particular country or of a political subdivision of the particular country, and

(iii) the particular non-resident entity is liable, under the laws of the particular country, to pay an income or profits tax imposed by the government of the particular country on all of the particular non-resident entity's income, profits or gains;

(h) subject to paragraph (i), a non-resident entity is deemed to be a controlled foreign affiliate of the taxpayer throughout the period that begins at the earliest time, in the taxpayer's taxation year in the return of income for which the taxpayer elects in prescribed form to treat the non-resident entity as a controlled foreign affiliate of the taxpayer (referred to in this paragraph as the "taxpayer's election year"), at which the non-resident entity is a foreign affiliate of the taxpayer and that ends at the earliest subsequent time at which it is not a foreign affiliate of the taxpayer, if

(i) at any time in the taxpayer's election year

(A) the taxpayer holds a participating interest in the non-resident entity and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins), or

(B) a controlled foreign affiliate of the taxpayer holds a participating interest in the non-resident entity, a taxation year of the controlled foreign affiliate ends, and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins) in that taxation year of the controlled foreign affiliate,

(ii) the non-resident entity is, at the end of its taxation year referred to in subparagraph (i), a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(iii) the taxpayer has not made any other election under this paragraph in respect of the non-resident entity;

(i) an election made by the taxpayer (or where the taxpayer is a partnership, by an entity that was at any time a member of the taxpayer) under paragraph (h) is, other than for the purposes of applying this paragraph and subparagraph (h)(iii), deemed never to have been made, if

(i) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine an amount that would, if this Act were read without reference to this paragraph, be required to be added or deducted (otherwise than under subsection 104(13)) in computing the taxpayer's income for the year because of the application of section 91 and an election under paragraph (h) in respect of a foreign affiliate, and

(ii) information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(j) if the taxpayer has, by notifying the Minister in writing in the taxpayer's return of income for the particular taxation year, elected to have this paragraph apply in respect of the particular participating interest, the taxpayer files with that return of income prescribed information in prescribed form, an entity (referred to in this paragraph as the "specified entity") has a significant interest in another entity that is a corporation, partnership or trust, the particular non-resident entity is the specified entity or has, directly or indirectly, an interest in the specified entity, and the financial statements of the specified entity do not reflect property or indebtedness of the other entity, in determining only whether the particular non-resident entity is a foreign investment entity, and where the taxpayer so stipulates in that election, whether the particular non-resident entity is a qualifying entity

(i) each of the following is deemed to be nil:

(A) the carrying value of each

(I) participating interest held, at the time (referred to in this paragraph as the "specified time") that is the end of the particular non-resident entity's last taxation year that ends in the particular taxation year, by the specified entity in the other entity, and

(II) debt owing at the specified time to the specified entity by the other entity (other than a debt acquired in the ordinary course of a business that is not at the specified time an investment business carried on by the specified entity), and

(B) the net accounting income of the specified entity at the specified time derived from property of the specified entity the carrying value of which is deemed to be nil under clause (A),

(ii) each property that is (or that is deemed by this subparagraph in respect of the particular participating interest to be) at the specified time property of the other entity (other than a debt owing to the other entity by the specified entity where the other entity and the specified entity are related to each other at the specified time) and that is valued for the purpose of the other entity's financial statements for its taxation year that includes the specified time (or deemed by this subparagraph to have a carrying value to the other entity) is deemed to be at the specified time property of the specified entity and is deemed to have at the specified time a carrying value to the specified entity equal to the amount determined by the formula

$$A \times B/C$$

where

A is the carrying value at the specified time to the other entity of the property,

B is the total of all amounts each of which is

(A) the fair market value at the specified time of a participating interest in the other entity held at the specified time by the specified entity, and

(B) the fair market value at the specified time of a debt (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by the specified entity) that the other entity owes at the specified time to the specified entity, and

C is the total of all amounts each of which is

(A) the fair market value at the specified time of a participating interest in the other entity held at the specified time by an individual or an entity, and

(B) the fair market value at the specified time of a debt owing at the specified time by the other entity to a holder of a participating interest in the other entity (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by a holder of a participating interest in the other entity),

(iii) the specified entity is deemed

(A) to have carried on the proportion obtained for the formula B/C in subparagraph

(ii) (in respect of the specified entity and the other entity) of the activities carried on at the specified time by the other entity in which it used the property referred to in subparagraph (ii), and

(B) to have that proportion of the net accounting income of the other entity for the period in the taxation year of the other entity ending at the specified time that was derived from the activities referred to in clause (A), and

(iv) an exempt business of the other entity at any time in the particular non-resident entity's last taxation year that ends in the particular taxation year is, to the extent that its activities are deemed by subparagraph (iii) to be carried on by the specified entity, deemed to be an exempt business of the specified entity at that time in that last year;

(k) subject to paragraphs (m) and (n), the taxpayer has a tax avoidance motive in respect of the particular participating interest (and any participating interests of the taxpayer in the particular non-resident entity that are identical to the particular participating interest), only if it is reasonable to conclude that the main reasons for the taxpayer acquiring, holding or having the particular participating interest include

(i) the derivation of a benefit the value of which can reasonably be attributed principally, directly or indirectly, to income derived from investment property, to profits or gains from the disposition of investment property, or to an increase in value of investment property, and

(ii) the deferral or reduction of the amount of tax payable on that income or those profits or gains;

(l) in applying paragraph (k) in respect of the particular participating interest, the factors to be considered in determining the existence of a tax avoidance motive include

(i) the nature, organization and operation of

(A) the particular non-resident entity,

(B) any foreign investment entity in which the particular non-resident entity or a specified party in respect of the particular non-resident entity has a direct or indirect interest, and

(C) any foreign investment entity in which the taxpayer or a specified party in respect of the taxpayer has a direct or indirect interest,

(ii) the form of, and the terms and the conditions governing, the direct or indirect interests referred to in subparagraph (i),

(iii) the extent to which and the time at which the particular non-resident entity, or an entity in which a direct or indirect interest referred to in subparagraph (i) is held, is subject to an income or profits tax on its income, profits and gains,

(iv) the extent to which and the time at which the taxpayer, or an entity or individual that holds a direct or indirect interest referred to in subparagraph (i), is subject to an income or profits tax on the taxpayer's or entity's, as the case may be, share of the income, profits and gains of the entity in which the direct or indirect interest is held, and

(v) the amount of tax that would have been payable by the taxpayer under this Part had the taxpayer earned the income or realized the profits or gains in respect of the investment property referred to in subparagraph (k)(i) at the time that the income was earned, or the profits or gains were realized, by the entities that owned or held the investment property;

(m) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest held by the taxpayer at any time in the particular taxation year if an amount that is all or substantially all of the payable net accounting income

(i) of the particular non-resident entity for each of its taxation years that ends in the particular taxation year becomes payable by it to its interest holders in, or within 120 days after, that taxation year of the particular non-resident entity, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which the amount became payable, and

(ii) of each other foreign investment entity, in which the particular non-resident entity has a direct or indirect interest, for each of the other entity's taxation years that ends in the particular taxation year becomes payable by the other entity to its interest holders in, or within 120 days after, that taxation year of the other entity, and the particular non-resident entity's share of that amount is included in computing its payable net accounting income for its taxation year that includes the time at which the amount became payable;

(n) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest, if throughout the period, in the particular taxation year, during which the taxpayer held the participating interest the particular non-resident entity was a "Regulated Investment Company" for the purposes of sections 851(b) and 852(a) of the United States *Internal Revenue Code of 1986* or a "Real Estate Investment Trust" for the purposes of sections 856(c) and 857(b) of that Code and the taxpayer includes, in computing the taxpayer's income for the particular taxation year, the amount of payable net accounting income that became payable by the particular non-resident entity to the taxpayer in the particular taxation year;

(o) in applying paragraph (d) of the definition "exempt interest" in subsection (1), paragraphs (m) and (n), the definition "mark-to-market formula" in subsection 94.2(1), and subsection 94.4(2), an amount is deemed not to have become payable at any time to an entity or individual, as the case may be, unless it was paid on or before that time to the entity or individual, as the case may be, or the entity or individual, as the case may be, was entitled on or before that time to enforce payment of it;

(p) the definition "exempt property" in subsection (1) does not apply in respect of a property of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether property is an exempt property, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(q) paragraphs (a) to (c) of the definition "foreign investment entity" in subsection (1) do not apply in respect of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the particular non-resident entity is a foreign investment

entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(*r*) the definition “qualifying entity” in subsection (1) does not apply if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an entity is a qualifying entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(*s*) if at any time a taxpayer has a participating interest in a particular foreign investment entity and the taxpayer has at that time a participating interest (referred to in this paragraph as the “indirect participating interest”) in another non-resident entity solely because the particular foreign investment entity has at that time a participating interest in that other non-resident entity, then the indirect participating interest is deemed (other than in applying this paragraph) not to be a participating interest of the taxpayer at that time;

(*t*) if the taxpayer is an authorized foreign bank, the taxpayer is deemed for the purposes of subsections 94.1(4), 94.2(5) to (8) and (12), 94.3(4) and 94.4(2) to be resident in Canada throughout the particular taxation year;

(*u*) the dispositions, if any, in the particular taxation year of the particular participating interest and any participating interests of the taxpayer in the particular non-resident entity that are identical to the particular participating interest are deemed to occur in the order in which those participating interests were acquired (determined without reference to any other provision of this Act) by the taxpayer; and

(*v*) if it can reasonably be considered that one of the main reasons that an entity or individual holds at any time on or after ANNOUNCEMENT DATE a participating interest in a non-resident entity is to cause the condition in paragraph (*a*) of the definition “arm’s length interest” in subsection (1) to be met at that time in respect of the participating interest or an identical participating interest held by any entity or individual, the condition is deemed not to have been satisfied at that time in respect of the participating interest or identical participating interest.

(3) This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity if

(*a*) the taxpayer is not an exempt taxpayer for the particular taxation year;

(*b*) the participating interest is held by the taxpayer at the end of a taxation year of the non-resident entity that ends in the particular taxation year;

(*c*) at the end of that taxation year of the non-resident entity it is a foreign investment entity; and

Income
inclusion —
imputed
income regime

(d) at the end of that taxation year of the non-resident entity the taxpayer's participating interest is not an exempt interest of the taxpayer.

(4) If subsection (3) or 94.2(9) applies to a taxpayer resident in Canada for a taxation year of the taxpayer in respect of a participating interest and subsections 94.2(3) and 94.3(3) do not apply to the taxpayer for the taxation year in respect of the participating interest, then this subsection applies to the taxpayer for the taxation year in respect of the participating interest and there shall be included (as income from property from a property that is the participating interest) in computing the taxpayer's income for that taxation year the total of all amounts each of which is the amount, in respect of each month in that taxation year, at the end of which month the taxpayer holds the participating interest, determined by the formula

$$A \times B$$

where

A is the designated cost, to the taxpayer of the participating interest, at the end of the month; and

B is the quotient obtained when the rate of interest prescribed, in respect of amounts required by this Act to be paid by the Minister, for the quarterly period that includes that month is divided by 12.

Loss on
disposition of
interest —
reconciliation

(5) Notwithstanding any other provision of this Act, if a taxpayer disposes, at a particular time in a particular taxation year, of a participating interest of the taxpayer and subsection (4) applied for the purpose of computing the taxpayer's income, for any taxation year of the taxpayer that began on or before the particular time, in respect of the participating interest

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount included in respect of the participating interest because of subsection (4) in computing the taxpayer's income for

(I) the particular taxation year, or

(II) any taxation year, of the taxpayer, that ends before the particular taxation year and after the taxpayer last acquired the participating interest

exceeds

(B) the total of all amounts each of which is an amount in respect of the participating interest that is deductible under paragraph 94.4(2)(a) in computing the taxpayer's income for any of those taxation years, and

(ii) the amount that would, if this Act were read without reference to paragraph (b) and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of the participating interest; and

(b) the taxpayer's capital loss for the taxation year from the disposition of the participating interest is the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of the participating interest

exceeds

(ii) the amount in respect of the participating interest deducted by the taxpayer under paragraph (a) in computing the taxpayer's income for the particular taxation year.

Foreign Investment Entities — Mark-to-Market

Definitions **94.2** (1) The definitions in subsection 94.1(1), and the following definitions, apply in this section.

"deferral amount"
« montant de report » "deferral amount", of a taxpayer in respect of a participating interest in an entity, means, subject to subsections (6) and (14) to (18), the positive or negative amount determined by the formula

$$A \times (B - C)$$

where

A is

(a) if, immediately before the beginning of the taxpayer's first taxation year that began after 2002, the interest was capital property held by the taxpayer, 1/2, and

(b) in any other case, 1;

B is

(a) the fair market value of the interest at the first time in a particular taxation year of the taxpayer at which the taxpayer was resident in Canada where

(i) the taxpayer held the interest at the end of the preceding taxation year,

(ii) at the end of that preceding year, the taxpayer was resident in Canada or the interest was taxable Canadian property,

(iii) subsection (4) did not apply to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for any preceding taxation year, and

(iv) subsection (4) applies to the taxpayer for the purpose of computing the taxpayer's income in respect of the interest for the particular year, and

(b) nil in any other case; and

C is

(a) if paragraph (a) of the description of B applies in respect of the interest, the cost amount of the property immediately before the first time in the particular year at which the taxpayer was resident in Canada, and

(b) nil in any other case.

“gross-up
factor”
« facteur de
majoration »

“gross-up factor”, for a particular deferral amount, means

(a) if the amount determined for A in the definition “deferral amount” in respect of the particular deferral amount is 1/2, 2; and

(b) in any other case, 1.

“mark-to-
market
formula”
« formule
d'évaluation à
la valeur du
marché »

“mark-to-market formula”, for a taxation year of a taxpayer in respect of a participating interest of the taxpayer in a non-resident entity, means the formula

$$(A + B + C + D) - (E + F + G)$$

where

A is the total of all amounts each of which is the taxpayer's proceeds from a disposition of the participating interest in the taxation year (other than a disposition deemed to arise because of subsection 128.1(4) or 149(10));

B is

(a) if the taxpayer held the participating interest at the end of the taxation year, the fair market value (determined before taking into account any amount payable at the end of the taxation year from the non-resident entity in respect of the participating interest) at that time of the participating interest, and

(b) in any other case, nil;

C is the total of all amounts (other than an amount to which the description of A applies) received by the taxpayer in the taxation year from the non-resident entity in respect of the participating interest;

D is

(a) the taxpayer's deferral amount in respect of the participating interest, if

(i) the deferral amount is a positive amount,

(ii) the participating interest was not disposed of by the taxpayer in the taxation year, and

(iii) the taxpayer so elects in respect of the participating interest in prescribed form filed with the Minister not later than the taxpayer's filing-due date for the taxation year,

(b) the taxpayer's deferral amount in respect of the participating interest if

(i) the taxpayer disposed of the participating interest in the taxation year, and

(ii) no election was made under paragraph (a) in respect of the participating interest by the taxpayer for a preceding taxation year, and

(c) in any other case, nil;

E is the total of all amounts each of which is the cost at which the taxpayer acquired the participating interest in the taxation year (otherwise than because of an acquisition deemed to arise because of subsection 128.1(4) or 149(10));

F is

(a) if the taxpayer held the participating interest at the beginning of the taxation year, the fair market value at that time of the participating interest (determined before taking into account any amount payable at that time from the non-resident entity in respect of the participating interest), and

(b) in any other case, nil; and

G is

(a) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the preceding taxation year of the taxpayer, the amount that would be deductible under subparagraph (4)(a)(ii) in computing the taxpayer's income for that preceding taxation year in respect of the participating interest if that subparagraph were read without reference to clause (4)(a)(ii)(A), and

(b) in any other case, nil.

“readily
obtainable fair
market value”
« juste valeur
marchande
vérifiable »

“readily obtainable fair market value”, if any, at any time of a particular participating interest in a non-resident entity held at that time by a taxpayer, means the fair market value at that time of the participating interest if

(a) in respect of the particular participating interest

(i) there is a regularly published price of the amount (or of the average of the amounts each of which is the amount) at which participating interests that are identical to the particular participating interest last traded on a prescribed stock exchange on each of the latest 10 consecutive trading days of the participating interests on that stock exchange in the 30-day period that begins before the day that includes that time,

(ii) the particular participating interest would, at that time, be an arm's length interest of the taxpayer if the definition “arm's length interest” in subsection 94.1(1) were read without reference to paragraph (b) of that definition,

(iii) the identical participating interests are listed on that stock exchange throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest, and

(iv) there are at least 10 trading days of the identical participating interests on that stock exchange in the period that begins 30 days before that time; or

(b) in respect of the particular participating interest

(i) the participating interests in the non-resident entity that are identical to the particular participating interest have, throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer held the particular participating interest, conditions attached that require the non-resident entity to accept at the demand of the holders of the participating interests (or that require the holders of the participating interests to accept, at the demand of the non-resident entity), at a price determined and payable in accordance with the conditions, the surrender in whole or in part of the participating interests, and

(ii) that price

(A) is determined by reference to the fair market value, at the time the participating interest is surrendered, of the property of the non-resident entity, and

(B) would have been acceptable to entities dealing at arm's length with one another.

"reconciliation
amount"
« montant de
rapproche-
ment »

"reconciliation amount", at a particular time in a taxation year of a taxpayer in respect of a participating interest of the taxpayer, means the amount (including a negative amount) determined at the particular time by the formula

$$A - B$$

where

A is the amount determined by the formula

$$C - D$$

where

C is the amount that would be the cost at the particular time of the participating interest to the taxpayer if this Act were read without reference to this section, and

D is

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, the cost at the particular time to the taxpayer of the participating interest, and

(b) in any other case, the taxpayer's proceeds of disposition from the last disposition in the taxation year by the taxpayer of the participating interest; and

B is the amount determined by the formula

$$(E + F) - G$$

where

E is the total of all amounts each of which is an amount, in respect of the participating interest, that is deducted, or that would if this Act were read without reference to subsection (20) have been deducted, under subsection (4) in computing the taxpayer's income for

- (a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a taxation year (in this definition referred to as the “preceding taxation year”) of the taxpayer that precedes the taxation year, and
 - (b) in any other case, the taxation year or a preceding taxation year,
- F is the total of all amounts each of which is an amount, in respect of the participating interest, deducted under paragraph 94.4(2)(a) in computing the taxpayer’s income for
 - (a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and
 - (b) in any other case, the taxation year or a preceding taxation year, and
- G is the total of all amounts each of which is an amount, in respect of the participating interest, that is included, or that would if this Act were read without reference to subsection (20) have been included, under subsection (4) in computing the taxpayer’s income for
 - (a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and
 - (b) in any other case, the taxation year or a preceding taxation year.

“tracking
entity”
« entité de
référence »

“tracking entity”, in respect of a particular participating interest of a taxpayer in a particular non-resident entity at a particular time, means the particular non-resident entity if

- (a) the tracked properties described in paragraph (9)(d) in respect of the participating interest are at that time owned by the particular non-resident entity, and
 - (i) the total fair market value at that time of those tracked properties is less than 90% of the total fair market value at that time of all property owned at that time by the particular non-resident entity, and
 - (ii) the total fair market value at that time of those tracked properties that are at that time investment property exceeds 50% of the total fair market value at that time of those tracked properties; or
- (b) any tracked property described in paragraph (9)(d) in respect of the participating interest is not at that time owned by the particular non-resident entity, the particular non-resident entity (or an entity with which the particular non-resident entity does not deal at arm’s length) owns property that is at that time investment property, and it is reasonable to conclude that that investment property (or property that may be substituted for that investment property) may be used, or give rise to property used, to satisfy, directly or indirectly, the right referred to in paragraph (9)(d) in respect of the particular participating interest.

“trading day”
« jour de
bourse »

Rules of
application

“trading day”, of a participating interest on a prescribed stock exchange, means a day on which the participating interest trades on that stock exchange.

(2) In this section,

(a) subsection 94.1(2) applies;

(b) in applying paragraph (a) of the definition “readily obtainable fair market value” in subsection (1) in respect of a particular participating interest, in a non-resident entity, held by a taxpayer in a taxation year, where participating interests, in the non-resident entity, that are identical to the particular participating interest are listed on more than one prescribed stock exchange, the references in that paragraph to a prescribed stock exchange shall be read as references to

(i) if the taxpayer so elects, by notifying the Minister in writing in the taxpayer’s return of income for that taxation year or a preceding taxation year, the prescribed stock exchange identified by the taxpayer in that election, and

(ii) if the taxpayer has not filed an election in accordance with subparagraph (i) or if participating interests that are identical to the particular participating interest are no longer listed on the stock exchange identified in the election referred to in that subparagraph, the prescribed stock exchange chosen by the Minister;

(c) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

(i) subsection (3) applied, because of an election under paragraph (3)(b), for a taxation year (referred to in this paragraph as the “preceding taxation year”) that ended before the particular taxation year of the taxpayer in respect of the participating interest (or in respect of any other participating interests, in the non-resident entity, that are identical to the participating interest), and

(ii) subsection (3) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the participating interest (or in respect of any of the other participating interests);

(d) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the participating interest has a readily obtainable fair market value and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(e) in applying subparagraph (4)(a)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that subparagraph to “as income from property from a

property that is the participating interest” is to be read as a reference to “as income from property that is a source outside Canada that is the participating interest”, if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year; and

(f) in applying subparagraph (4)(b)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that subparagraph to “a capital gain for the year” is to be read as a reference to “a capital gain for the year from a source outside Canada”, if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

Application of
mark-to-
market method

(3) Subject to paragraphs (2)(c) and (d) and (5)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest held in the particular taxation year by the taxpayer

(a) if paragraph (11)(a) applies to the taxpayer for the particular taxation year in respect of the participating interest; or

(b) if

(i) subsection (9) or 94.1(3) applies to the taxpayer for the particular taxation year in respect of the participating interest,

(ii) the participating interest has, at all times in the particular taxation year at which the taxpayer held the participating interest, a readily obtainable fair market value,

(iii) either

(A) this subsection applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest, or

(B) the taxpayer has elected that this subsection apply in respect of the participating interest by notifying the Minister in writing in the taxpayer’s return of income filed on or before the taxpayer’s filing due-date for the first taxation year of the taxpayer for which

(I) subsection (9) or 94.1(3), as the case may be, applies to the taxpayer in respect of the participating interest, or

(II) subsection 94.1(3) applies to the taxpayer in respect of the participating interest and that immediately follows a taxation year of the taxpayer for which subsection (9) applied to the taxpayer in respect of the participating interest, and

(iv) subsection 94.3(3) has never applied to the taxpayer for a taxation year in respect of the participating interest or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the participating interest.

Income
inclusion —
mark-to-
market regime

(4) If subsection (3) applies to a taxpayer for a taxation year of the taxpayer in respect of a participating interest in a non-resident entity, this subsection applies and in computing the taxpayer's income for the taxation year in respect of the participating interest

(a) where subsection (20) does not apply for the taxation year in respect of the participating interest,

(i) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(ii) there may be deducted, as a loss from property,

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest; and

(b) where subsection (20) applies for the taxation year in respect of the participating interest,

(i) the taxpayer is deemed to have a capital gain for the year from the disposition of capital property, that is the participating interest, in the taxation year equal to the amount, if any, by which the total of

(A) the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(B) the positive amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(C) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(ii) the taxpayer is deemed to have a capital loss for the taxation year from the disposition of capital property, that is the participating interest, in the taxation year equal to

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the amount, if any, by which the total of

(I) the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(II) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(III) the positive amount, if any, that is the amount determined for D in applying the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2).

(5) If a taxpayer is non-resident at any time in a taxation year of the taxpayer

(a) in applying subsection (4) and the definition “mark-to-market formula” in subsection (1) (other than the description of D in that definition) in respect of a participating interest of the taxpayer, the taxation year is deemed to be the period, if any, that begins at the first time in the taxation year at which the taxpayer is resident in Canada and ends at the last time in the taxation year at which the taxpayer is resident in Canada;

(b) except for the purposes of subsection (4) and paragraph (c), subsection (3) does not apply to the taxpayer at that time; and

(c) where the taxpayer is an individual (other than a trust) who was non-resident throughout a particular period that is within a taxation year (determined under paragraph (a)) of the taxpayer, at any time in the particular period the individual holds a participating interest in a non-resident entity, and subsection (3) applies to the individual throughout the particular period in respect of the participating interest,

(i) for the purpose of section 114, the income or loss of the individual in respect of the participating interest for the particular period shall be determined without reference to this section, and

(ii) in computing the amount determined under paragraph 114(a) in respect of the individual for the taxation year

(A) there shall be deducted any amount that would be included under subparagraph (4)(a)(i) in computing the individual’s income in respect of the participating interest for the particular period if

(I) the amount determined for D in applying the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest were nil, and

(II) the particular period were a taxation year, and

Non-resident
periods
excluded

(B) there shall be added any amount that would be deductible under subparagraph (4)(a)(ii) in computing the individual's income in respect of the participating interest for the particular period if

(I) the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest were nil, and

(II) the particular period were a taxation year.

Foreign
partnership —
member
becoming
resident

(6) If, at a particular time in a fiscal period of a partnership, a person resident in Canada becomes a member of the partnership, or a person who is a member of the partnership becomes resident in Canada, and immediately before the particular time no member of the partnership is resident in Canada,

(a) all amounts determined under this section shall be determined as if that fiscal period began at the first time in that fiscal period (determined without reference to this paragraph) at which a member of the partnership was resident in Canada;

(b) for the purpose of the definition "deferral amount" in subsection (1), as it applies in respect of dispositions that occur after the particular time and before the first subsequent time to which this subsection applies in respect of the partnership, subsection (4) is deemed not to have applied to the partnership for any preceding fiscal period; and

(c) where a negative deferral amount would, if this Act were read without reference to this paragraph, be determined in respect of a participating interest held by the partnership immediately before the particular time, the deferral amount in respect of the interest is deemed to be nil.

Foreign
partnership —
member
ceasing to be
resident

(7) If, at a particular time in a fiscal period of a partnership, a person resident in Canada ceases to be a member of the partnership, or a person who is a member of the partnership ceases to be resident in Canada and immediately after the particular time no member of the partnership is resident in Canada, all amounts determined under this section shall be determined as if that fiscal period ended at the last time in that fiscal period (determined without reference to this subsection) at which a member of the partnership was resident in Canada.

Application of
ss. (6) and (7)

(8) In subsections (6) and (7) and this subsection,

(a) if it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (6) or (7), the member is deemed not to be resident in Canada; and

(b) if a particular partnership is a member of another partnership at any time,

(i) each person or partnership that is at that time a member of the particular partnership is deemed to be at that time a member of the other partnership,

(ii) each person or partnership that becomes at that time a member of the particular partnership is deemed to become at that time a member of the other partnership, and

(iii) each person or partnership that ceases at that time to be a member of the particular partnership is deemed to cease at that time to be a member of the other partnership.

(9) This subsection applies to a taxpayer (other than an exempt taxpayer) for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests that are identical to the particular participating interest and that are held by the taxpayer in the particular taxation year) only if

(a) subsection 94.1(3) does not apply to the taxpayer for the particular taxation year in respect of the particular participating interest;

(b) at the end of a taxation year of the non-resident entity that ends in the particular taxation year, the particular participating interest

(i) is held by the taxpayer, and

(ii) either

(A) is not an exempt interest in the non-resident entity, or

(B) would not be such an exempt interest if the definition “exempt interest” in subsection 94.1(1) were read without reference to subparagraph (a)(i) or (ii) of that definition;

(c) at the end of that taxation year of the non-resident entity, it is a tracking entity in respect of the particular participating interest;

(d) at any time in the particular taxation year, the amount of any payment under a right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual) to receive, in any manner whatever and from any entity, amounts in respect of the particular participating interest or any identical interests, or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties (such property or properties together referred to, in this subsection and the definition “tracking entity” in subsection (1), as “tracked property” or “tracked properties”):

(i) production from the property, use of the property, gains from the disposition of the property, profits from the disposition of the property, fair market value of the property,

(ii) income from the property, profits from the property, revenue from the property, cash flow from the property, or

(iii) any other criterion similar to a criterion referred to in subparagraph (i) or (ii); and

(e) throughout each taxation year of the non-resident entity that ends in the particular taxation year, all or substantially all of the fair market value of the tracked property cannot be attributed, either directly or indirectly, to the fair market value of property

	<p>(i) that is a share or shares of the capital stock of a corporation that is at that time a particular foreign affiliate of the taxpayer that if held at that time by the taxpayer would be</p> <p>(A) a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) of the taxpayer in the particular foreign affiliate of the taxpayer, and</p> <p>(B) throughout the period, in the particular taxation year, that the taxpayer held the share or shares, a participating interest of the taxpayer in a qualifying entity, and</p> <p>(ii) that is not at that time tracked property in respect of a participating interest in a non-resident entity of an entity that is not related to the taxpayer.</p>
Treatment of foreign insurance policies	<p>(10) This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of an interest in an insurance policy, if</p> <p>(a) the taxpayer is not an exempt taxpayer for the particular taxation year;</p> <p>(b) the taxpayer holds, at any time in the particular taxation year, an interest in the insurance policy; and</p> <p>(c) the insurance policy is not an insurance policy issued by an insurer in the course of carrying on an insurance business in Canada the income from which is subject to tax under this Part.</p>
Treatment of foreign insurance policies	<p>(11) If subsection (10) applies to a taxpayer for a particular taxation year of the taxpayer in respect of an interest in an insurance policy</p> <p>(a) subject to paragraph (c), this paragraph applies to the taxpayer for the particular taxation year in respect of the interest, and no amount shall be included or deducted, as the case may be, under section 12.2, paragraphs 56(1)(d) and (j) and 60(a) and (s) and sections 138.1 and 148 in respect of the interest for the purpose of computing the taxpayer's income for the particular taxation year;</p> <p>(b) subject to paragraph (c), in applying subsections (1) to (4) and paragraph (d.1) of the definition "specified foreign property" in subsection 233.3(1) to the taxpayer in respect of the interest for the particular taxation year,</p> <p>(i) the interest is deemed at each time in the particular taxation year that it is held by the taxpayer to be a participating interest in a non-resident entity, and</p> <p>(ii) the amount determined for D in applying the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest is deemed to be nil;</p> <p>(c) paragraphs (a) and (b) do not apply to the taxpayer for the particular taxation year in respect of the interest if</p> <p>(i) the taxpayer is an individual and the interest in the policy was acquired by the individual more than 60 months before the individual became resident in Canada unless,</p>

at any time in the period that begins 60 months before the day on which the individual became resident in Canada and that ends at the end of the particular taxation year, the individual paid premiums in respect of the policy that are in excess of the level that can reasonably be considered to have been contemplated at the time the first interest in the policy was acquired,

(ii) under the terms and conditions of the insurance policy, the taxpayer is entitled to receive only

(A) benefits payable as a consequence of the occurrence of risks insured under the policy,

(B) an experience-rated refund of premiums for a year, or

(C) a return of premiums previously paid upon the surrender, cancellation or termination of the insurance policy, or

(iii) the taxpayer can establish to the satisfaction of the Minister that

(A) the interest in the policy was, on the anniversary day of the policy that occurs in the taxation year,

(I) an exempt policy, or

(II) a prescribed annuity contract, or

(B) the taxpayer has included in computing the taxpayer's income for the particular year the amount, if any, required under section 12.2 to be included in computing the taxpayer's income for that year in respect of the interest;

(d) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the end of a particular taxation year is deemed to have been acquired by the taxpayer at the beginning of the following taxation year at a cost equal to the fair market value at the end of the particular taxation year of the interest if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular year, and

(ii) paragraphs (a) and (b) apply to the taxpayer in respect of the interest for the taxpayer's following taxation year;

(e) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the beginning of a particular taxation year is deemed to have been disposed of by the taxpayer at the end of the taxpayer's preceding taxation year for proceeds of disposition equal to its fair market value at the end of that preceding taxation year if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and

(ii) paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer's preceding taxation year;

(f) for the purposes of this subsection and subsections (1) and (4), the fair market value of an interest in an insurance policy, the proceeds of disposition of an interest in an insurance policy and amounts paid to a beneficiary in respect of an interest in an insurance policy are each determined without reference to benefits paid, payable or anticipated to be payable, under the insurance policy as a consequence only of the occurrence of the risks insured under the insurance policy;

(g) for the purposes of this subsection and subsections (1) and (4),

(i) an interest in an insurance policy is deemed to have been acquired by the taxpayer in a particular taxation year (notwithstanding that the interest was held by the taxpayer at the end of the preceding taxation year), where the taxpayer made a payment described in subparagraph (ii) in respect of a premium or a loan under the policy in the particular taxation year, and

(ii) the cost to the taxpayer of an interest in an insurance policy acquired in a particular taxation year is the total of all amounts each of which is

(A) the amount of a premium paid by the taxpayer in the particular taxation year under the insurance policy to the extent that it cannot be refunded (otherwise than on termination or cancellation of the policy) and is not a payment in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition “premium” in subsection 148(9),

(B) the amount of a payment made by the taxpayer in the particular taxation year in respect of the principal amount of a loan made under the insurance policy in any taxation year to the extent that the loan was included in the amount determined for C in applying the definition “mark-to-market formula” in subsection (1) for the taxation year, in which the loan was made, in respect of the participating interest, and

(C) an amount (other than amount described in clause (A) or (B)) paid by the taxpayer, to an entity or individual other than the insurer that issued the policy, to acquire the interest from the entity or individual;

(h) if, under paragraph (d), a taxpayer is deemed to have acquired an interest in an insurance policy at the beginning of a taxation year (referred to in this paragraph as the “acquisition year”), the taxpayer may add to the cost of that interest, the amount, if any, by which

(i) the total amount of premiums paid by the taxpayer before the beginning of the acquisition year in respect of that interest at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest (to the extent that the premiums paid cannot be refunded otherwise than on termination or cancellation of the policy and are not premiums paid in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition “premium” in subsection 148(9))

exceeds

(ii) the total of the fair market value, at the beginning of the acquisition year, of that interest and the total of the amounts received by the taxpayer before the beginning of the acquisition year under the policy at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest;

(i) for the purpose of subsections (1) and (4), if the amount determined under subparagraph (h)(ii) exceeds the amount determined under subparagraph (h)(i) in respect of an interest in an insurance policy of a taxpayer described in paragraph (h), the amount of the excess shall be added in computing the taxpayer's proceeds of disposition of that interest for the taxation year in which the taxpayer disposes of the interest otherwise than because of paragraph (e); and

(j) where an interest in an insurance policy is held by a taxpayer at the beginning of a particular taxation year, paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer's preceding taxation year, the interest is deemed to have been acquired by the taxpayer at the beginning of the particular taxation year at a cost equal to the amount, if any, by which

(i) the total of

(A) the fair market value, at the end of the taxpayer's preceding taxation year, of the interest, and

(B) the amount that would be determined under subparagraph (4)(a)(ii) in respect of the interest in respect of the taxpayer for the taxpayer's preceding taxation year if that subparagraph were read without reference to its clause (A),

exceeds

(ii) the amount determined under paragraph (i) in respect of the interest in respect of the taxpayer.

Change of
status

(12) If a participating interest in a non-resident entity is held by a taxpayer at a time that is the beginning of a taxation year, subsection (4) applied for the purpose of computing the taxpayer's income for the preceding taxation year in respect of the participating interest, and that subsection does not apply for the purpose of computing the taxpayer's income for the taxation year in respect of the participating interest (otherwise than because the taxpayer became an exempt taxpayer or ceased to reside in Canada),

(a) subject to paragraph (c), the taxpayer is deemed to have acquired the participating interest at that time at a cost equal to its fair market value at that time;

(b) where the participating interest is capital property of the taxpayer, in computing the adjusted cost base after that time to the taxpayer of the interest

(i) there shall be deducted

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the

participating interest, the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be added

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest; and

(c) where paragraph (b) does not apply,

(i) there shall be deducted in computing the cost to the taxpayer of the participating interest

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest, the lesser of

(I) the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(II) the cost to the taxpayer of the participating interest, determined without reference to this subparagraph, and

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest,

(ii) there shall be included in computing the taxpayer’s income for the taxation year in respect of the participating interest the amount, if any, by which

(A) the amount determined under subclause (i)(A)(I) in respect of the participating interest

exceeds

(B) the amount determined under subclause (i)(A)(II) in respect of the participating interest, and

(iii) there shall be added in computing the cost to the taxpayer of the participating interest

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest.

Cost of participating interest	<p>(13) If a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a taxation year and subsection (4) applies for the purpose of computing the taxpayer's income for the taxation year in respect of the participating interest, in determining the taxpayer's cost of the participating interest immediately before the particular time</p> <p>(a) if the participating interest was held by the taxpayer at the beginning of the taxation year, its cost to the taxpayer immediately before the particular time is deemed to be equal to the fair market value at the beginning of the taxation year of the participating interest; and</p> <p>(b) in any other case, its cost to the taxpayer immediately before the particular time is deemed to be equal to the amount that would be its cost to the taxpayer at the particular time if this Act were read without reference to this section.</p>
Deferral amount where same interest reacquired	<p>(14) Subject to subsections (15) to (18), if a taxpayer disposes of a participating interest in an entity at any time in a taxation year of the taxpayer and subsection (4) applies for the purpose of computing the taxpayer's income for the year in respect of the participating interest, in applying subsection (4) to a disposition after that time by the taxpayer of the participating interest, the deferral amount of the taxpayer in respect of the participating interest is nil.</p>
Deferral amount — fresh start re change of status of entity	<p>(15) If a participating interest is deemed by paragraph (12)(a) to have been acquired at a particular time in a taxation year by a taxpayer, in applying subsection (4) to a disposition after the taxation year by the taxpayer of the participating interest and to an election made after the taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for the taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined</p> <p>(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount" in subsection (1), as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that began before the particular time; and</p> <p>(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time.</p>
Deferral amount — fresh start after emigration of taxpayer	<p>(16) If a taxpayer ceases at a particular time to be resident in Canada, in applying subsection (4) to a disposition after the particular time by the taxpayer of a participating interest and to an election made after the particular time by the taxpayer under subparagraph (a)(iii) of the description of D in the definition "mark-to-market formula" in subsection (1) for a taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined</p> <p>(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount" in subsection (1), as if subsection (4) had not applied to the taxpayer</p>

	in respect of the participating interest for taxation years that began before the particular time; and
	(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time.
Deferral amount — fresh start on becoming an exempt taxpayer	<p>(17) If a taxpayer is an exempt taxpayer for a particular taxation year of the taxpayer because of the application of paragraph (a) or (b) of the definition “exempt taxpayer” in subsection 94.1(1), and the taxpayer was not an exempt taxpayer for the taxation year of the taxpayer that preceded the particular taxation year, in applying subsection (4) to a disposition after the particular taxation year by the taxpayer of a participating interest and to an election made after the particular taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection (1) for a taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined</p> <p>(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition “deferral amount” in subsection (1), as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that ended before the particular taxation year; and</p> <p>(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular taxation year.</p>
Superficial dispositions	<p>(18) If a taxpayer disposes of a participating interest, the deferral amount in respect of the participating interest would otherwise be a negative amount, and the disposition would, if the participating interest were a capital property and a loss arose on the disposition, give rise to a superficial loss (within the meaning that would be assigned by section 54 if the definition “superficial loss” in that section were read without the reference to subsection 40(3.4) in paragraph (h) of that definition),</p> <p>(a) except for the purpose of applying paragraph (b) in respect of the disposition, the deferral amount of the taxpayer in respect of the participating interest is deemed to be nil; and</p> <p>(b) the deferral amount of the taxpayer in respect of the property that would be the substituted property referred to in that definition if the assumptions described in this subsection applied is deemed to be equal to the deferral amount of the taxpayer in respect of the participating interest.</p>
Determination of capital dividend account	<p>(19) If an amount has been included or deducted under paragraph (4)(a) in computing the income of a corporation resident in Canada for a taxation year in respect of a participating interest, in computing the capital dividend account of the corporation</p> <p>(a) the corporation is deemed to have</p> <p>(i) a capital gain from a disposition at the end of the taxation year of property equal to twice the amount of the taxable capital gain determined under subparagraph (ii), and</p>

(ii) a taxable capital gain from the disposition at the end of the taxation year of property equal to the lesser of

(A) the positive amount, if any, that is the amount determined for D in applying the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(B) the amount included in computing the income of the corporation for the taxation year under subsection (4); and

(b) the corporation is deemed to have

(i) a capital loss from a disposition at the end of the taxation year of property equal to twice the amount of the allowable capital loss determined under subparagraph (ii), and

(ii) an allowable capital loss from the disposition at the end of the taxation year of property equal to the lesser of

(A) the absolute value of the negative amount, if any, that is the amount determined for D in applying the definition “mark-to-market formula” in subsection (1) for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(B) the amount deducted in computing the income of the corporation for the taxation year under subsection (4).

Application of
para. (4)(b)

(20) This subsection applies for a taxation year of a taxpayer in respect of a participating interest, in a particular non-resident entity, held in the taxation year by the taxpayer, if

(a) the participating interest would, if paragraph 39(1)(a) and the definition “inventory” in subsection 248(1) were read without reference to this section, be a capital property of the taxpayer at the last time in the taxation year at which the taxpayer held the participating interest; and

(b) all or substantially all of the amount determined under the mark-to-market formula for the taxation year in respect of the participating interest can be attributed to

(i) capital gains or capital losses from the disposition of capital property (other than a participating interest in a foreign investment entity) by the particular non-resident entity or by any foreign investment entity in which the particular non-resident entity has a direct or indirect interest, and

(ii) increases or decreases in the fair market value of capital property (other than a participating interest in a foreign investment entity) of the particular non-resident entity or of any foreign investment entity in which the particular non-resident entity has a direct or indirect interest.

Disposition of
interest —
reconciliation

(21) If a taxpayer’s participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a particular taxation year, and subsection (4) applies for the

purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest, in computing that income

(a) where subsection (20) does not apply for the particular taxation year, and has never applied for a preceding taxation year, in respect of the participating interest,

(i) there may be deducted, as a loss from property from a property that is the participating interest, the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be included, as income from property from a property that is the participating interest, the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest; and

(b) in any other case,

(i) the taxpayer is deemed to have a capital loss for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) the taxpayer is deemed to have a capital gain for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest.

Foreign Investment Entities — Accrual

Definitions

94.3 (1) The definitions in subsections 94.1(1) and 94.2(1), and the following definitions, apply in this section.

“fresh-start
year”
« année de
redémarrage »

“fresh-start year”, of a non-resident entity in respect of a taxpayer, means a taxation year of the non-resident entity

(a) that ends in a taxation year of the taxpayer that begins after 2002 if, at the end of the taxation year of the non-resident entity, the non-resident entity is a foreign investment entity and the taxpayer holds a participating interest, other than an exempt interest, in the non-resident entity; and

(b) that begins immediately after a preceding taxation year of the non-resident entity at the end of which the non-resident entity was not a foreign investment entity or the taxpayer did not hold a participating interest in the non-resident entity.

“income
allocation”
« revenu
attribué »

“income allocation”, of a particular taxpayer in respect of a particular participating interest, in a non-resident entity, held by the particular taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount determined by the formula

$$A \times B/C$$

where

A is the amount that would be the income of the non-resident entity for the particular taxation year if

(a) except for the purposes of subparagraph (2)(b)(ii), section 91, subsection 107.4(1) and paragraph (f) of the definition “disposition” in subsection 248(1), the non-resident entity had been a taxpayer resident in Canada throughout its existence,

(b) each property held by the non-resident entity at the particular time that is the beginning of a fresh-start year of the non-resident entity in respect of the particular taxpayer had been

(i) disposed of by the non-resident entity immediately before the particular time for proceeds equal to its fair market value at the particular time, and

(ii) reacquired by the non-resident entity at the particular time at a cost equal to that fair market value,

(c) for a fresh-start year of the non-resident entity in respect of the particular taxpayer and for each following taxation year of the non-resident entity, each deduction in computing the non-resident entity’s income that is contingent on a claim by the non-resident entity had been claimed by the non-resident entity to the extent, and only to the extent, designated by the particular taxpayer in prescribed form filed with the Minister with the particular taxpayer’s return of income for the particular taxpayer’s taxation year in which that fresh-start year or the following year, as the case may be, ends,

(d) the non-resident entity had deducted the greatest amounts that it could have claimed or deducted as a reserve under sections 20, 138 and 140 for its taxation year that precedes a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(e) in applying sections 37, 65 to 66.4 and 66.7, the non-resident entity had not existed before a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(f) this Act were read without reference to subsections 20(11) and (12) and 104(4) to (6),

(g) where the non-resident entity holds at any time in the particular taxation year a participating interest in another non-resident entity, the description of D in the definition “mark-to-market formula” in subsection 94.2(1) did not apply in respect of that interest,

(h) paragraph (a) of the definition “exempt interest” in subsection 94.1(1) were read without reference to its subparagraph (i),

(i) the amount included in computing the non-resident entity’s income for the particular taxation year in respect of capital gains were the amount, if any, by which the amount determined under subparagraph 3(b)(i) exceeds the amount determined under subparagraph 3(b)(ii) in respect of the non-resident entity for the particular taxation year,

(j) the amount deducted in computing the non-resident entity's income for the particular taxation year in respect of capital losses (other than business investment losses) were the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, and

(k) the amount deducted in computing the non-resident entity's income for the particular taxation year in respect of business investment losses were the amount of its allowable business investment losses for the particular taxation year;

B is the amount that is the fair market value, at the end of the particular taxation year, of the particular participating interest; and

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition "participating interest" in subsection 94.1(1) were read without reference to paragraph (d) of that definition).

"loss
allocation"
« pertes
attribuées »

"loss allocation", of a particular taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is

(a) an amount that would, if paragraphs (a) to (h) of the description of A in the definition "income allocation" applied in respect of the particular taxpayer and the participating interest, be a loss of the non-resident entity for the particular taxation year from a business or property,

(b) the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, or

(c) an allowable business investment loss of the non-resident entity for the particular taxation year;

B is the amount that would, if paragraphs (a) to (h) of the description of A in the definition "income allocation" applied in respect of the particular taxpayer and the participating interest, be determined under paragraph 3(c) in respect of the entity for the particular taxation year;

C is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest; and

D is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating

interest, in the non-resident entity, if the definition “participating interest” in subsection 94.1(1) were read without reference to paragraph (d) of that definition).

“specified tax allocation”
« impôt déterminé attribué »

“specified tax allocation”, of a taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the total of all amounts each of which is the amount determined, in respect of the particular taxation year, by the formula

$$A \times (B/C) \times D$$

where

A is

(a) if that taxation year of the taxpayer begins after 2002, the income or profits tax paid by the non-resident entity in respect of the particular taxation year, to the extent that that tax can reasonably be considered to be in respect of the income or profits of the non-resident entity included in computing the amount determined in respect of the non-resident entity and the participating interest under the description of A in the definition “income allocation” for the particular taxation year or any of the five taxation years of the non-resident entity that precede the particular taxation year and that end after 2002, and

(b) in any other case, nil;

B is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest;

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition “participating interest” in subsection 94.1(1) were read without reference to paragraph (d) of that definition); and

D is the taxpayer’s relevant tax factor (as defined by subsection 95(1)) for that taxation year of the taxpayer.

Rules of application

(2) In this section,

(a) subsection 94.1(2) applies; and

(b) subsection (3) does not apply to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests, in the non-resident entity, that are identical to the particular participating interest and that are held in the particular taxation year by the taxpayer) if

(i) subsection 94.2(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest,

(ii) the taxpayer is a foreign investment entity at the end of the particular taxation year,

(iii) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an amount with respect to the particular participating interest would be required under subsection (4) to be added (or permitted under subsection (4) to be deducted) in computing the income of the taxpayer for the particular taxation year, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand,

(iv) the particular participating interest is an interest that would not, at each time in the particular taxation year at which the taxpayer held the particular participating interest (or any of the other participating interests) and at which a taxation year of the non-resident entity ends, be a participating interest, in the non-resident entity, if the definition “participating interest” in subsection 94.1(1) were read without reference to paragraph (d) of that definition,

(v) subsection (3)

(A) applied for a taxation year (referred to in this subparagraph as the “preceding taxation year”) that ended before the particular taxation year of the taxpayer in respect of the particular participating interest, and

(B) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the particular participating interest,

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (f) of the definition “exempt foreign trust” in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount,

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest,

(viii) any of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition “participating interest” in subsection 94.1(1) were read without reference to paragraph (d) of that definition) are not identical to the particular participating interest, or

(ix) where the non-resident entity is a trust, any amount of income or capital of the trust that any entity or individual may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity or individual of, or the failure by any entity or individual to exercise, a discretionary power.

Where accrual
method applies

(3) Subject to paragraph (2)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

(a) subsection 94.1(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest;

(b) either

(i) this subsection applied in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest, or

(ii) the taxpayer has elected that this subsection apply in respect of the particular participating interest, by notifying the Minister in writing in the taxpayer's return of income filed on or before the taxpayer's filing-due date for the first taxation year of the taxpayer for which

(A) subsection 94.1(3) applies to the taxpayer in respect of the particular participating interest, or

(B) subsection 94.2(9) does not apply to the taxpayer in respect of the particular participating interest and that immediately follows a taxation year for which subsection 94.2(9) applied to the taxpayer in respect of the particular participating interest;

(c) neither subsection 94.1(4) nor 94.2(3) applied to the taxpayer for a taxation year (referred to in this paragraph as the "preceding taxation year") that ended before the particular taxation year in respect of the particular participating interest (or in respect of an identical participating interest that was held by the taxpayer at any time when the taxpayer held the particular participating interest), unless subsection 94.2(9) applied for that preceding taxation year to the taxpayer in respect of the particular participating interest (or the identical participating interest);

(d) the particular participating interest is, at each time in the particular taxation year at which the taxpayer held the particular participating interest and at which a taxation year of the non-resident entity ends, capital property of the taxpayer; and

(e) the taxpayer files, with the taxpayer's return of income filed on or before the taxpayer's filing-due date for the particular taxation year, prescribed information in prescribed form.

(4) If subsection (3) applies to a taxpayer resident in Canada for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity, in computing the taxpayer's income for the particular taxation year

(a) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the formula

$$A - B - C - D$$

where

A is the total of all amounts each of which is the taxpayer's income allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year,

B is the total of all amounts each of which is the taxpayer's loss allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year,

C is the total of all amounts each of which is the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year, and

D is the amount, if any, by which

(i) the amount determined under subparagraph (b)(i) in respect of the taxpayer and the participating interest for the taxation year (referred to in this paragraph as the "preceding taxation year") of the taxpayer that immediately preceded the particular taxation year

exceeds

(ii) the amount determined under subparagraph (b)(ii) in respect of the taxpayer and the participating interest for the preceding taxation year; and

(b) there may be deducted, as a loss from a property that is the participating interest, the lesser of

(i) the absolute value of the negative amount, if any, determined by the formula in paragraph (a) in respect of the taxpayer and the participating interest for the particular taxation year, and

(ii) the amount, if any, by which

(A) the total of all amounts added under paragraph (a) in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year

exceeds

(B) the total of all amounts deductible under this paragraph in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year.

Adjusted cost
base

(5) In computing at any time the adjusted cost base to a taxpayer of a participating interest in a non-resident entity

(a) there shall be added the total of all amounts each of which is

(i) the amount added (or that would have been added if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), as income from a property that is the participating interest, under paragraph (4)(a) in computing the taxpayer's income for a taxation year of the taxpayer that ended before, or includes, that time, and

(ii) the product obtained when the amount determined under paragraph (i) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that

time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount that is determined by the fraction B/C described in the formula in that definition and that was used in computing the taxpayer's income allocation in respect of the participating interest for the particular taxation year; and

(b) there shall be deducted the total of all amounts each of which is

(i) the amount deducted (or that would have been deducted if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), as a loss from a property that is the participating interest, under paragraph (4)(b) in computing the taxpayer's income for a taxation year of the taxpayer that ended before, or includes, that time ,

(ii) the product obtained when the amount determined under paragraph (j) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount that is determined by the fraction C/D described in the formula in the definition "loss allocation" in subsection (1) that was used in computing the taxpayer's loss allocation in respect of the participating interest for the particular taxation year, and

(iii) the product obtained when the amount determined under paragraph (k) of the description of A in the definition "income allocation" in subsection (1) in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before, or includes, that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount determined by the fraction C/D described in the formula in the definition "loss allocation" in subsection (1) was used in computing the taxpayer's loss allocation in respect of the participating interest for the particular taxation year.

Foreign Investment Entities — Relief from Double Taxation

94.4 (1) In this section,

(a) the definitions in subsection 94.1(1) apply; and

(b) subsection 94.1(2) applies.

(2) If one or more amounts become, at a particular time in a particular taxation year of a taxpayer that begins after 2002 or in a preceding taxation year of the taxpayer that begins after 2002, payable to the taxpayer from a particular entity or another entity in respect of a participating interest in the particular entity (other than an amount that is proceeds of disposition of the participating interest or of a part of it), and the taxpayer is at the particular time resident in Canada,

Definitions
and rules of
application

Prevention of
double
taxation

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount that is in respect of any of those amounts payable and that is included (otherwise than because of the description of C in the definition "mark-to-market formula" in subsection 94.2(1)) in computing the taxpayer's income for any of those taxation years

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

(B) that is deducted under this paragraph in computing the taxpayer's income for any of those preceding taxation years, or

(C) where subsection 94.3(3) applied to the taxpayer in respect of the participating interest for any of those taxation years, that would, if the amount determined for D in applying the definition "specified tax allocation" in subsection 94.3(1) were the taxpayer's relevant tax factor (as defined in subsection 95(1)) minus 1, be the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the particular entity that ends in one of those taxation years for which subsection 94.3(3) applied to the taxpayer in respect of the participating interest, and

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount, in respect of the participating interest, that is, or would if this Act were read without reference to subsection 94.2(20) have been, included under subsection 94.1(4) or 94.2(4) in computing the taxpayer's income for any of those taxation years, or

(B) the amount, if any, by which all amounts each of which is an amount required by paragraph 94.3(5)(a) to be added in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

(C) that is required by paragraph 94.3(5)(b) to be deducted in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,

(D) that is, or would if this Act were read without reference to subsection 94.2(20) have been, deducted under subsection 94.2(4) in computing the taxpayer's income for any of those preceding taxation years, or

(E) that is deducted under this paragraph in computing the taxpayer's income for any of those preceding taxation years; and

(b) in computing after the particular time the adjusted cost base to the taxpayer of the participating interest there shall be deducted the amount deductible under paragraph (a) in computing the taxpayer's income.

Prevention of
double
taxation —
foreign tax
credit
unavailable

(3) If one or more particular amounts become payable to a taxpayer in a particular taxation year of the taxpayer, the taxpayer includes the particular amounts in computing its income for the particular taxation year, and the particular amounts are included in computing, in respect of a particular participating interest of the taxpayer, an amount deducted by the taxpayer under subsection (2) in computing its income for the particular taxation year, the taxpayer may deduct in computing the taxpayer's income for the particular taxation year the amount determined by the formula

$$A \times B$$

where

A is

(a) nil, if the taxpayer is a corporation and the particular amounts are income from a share of the capital stock of a foreign affiliate of the taxpayer, and

(b) the taxpayer's relevant tax factor (as defined by subsection 95(1)) for the particular taxation year, in any other case; and

B is the lesser of

(a) 15% of the total of all amounts, if any, determined under subparagraph (2)(a)(ii) in computing the amount deductible by the taxpayer, in respect of the particular participating interest and the particular amounts, under subsection (2) in computing its income for the particular taxation year, and

(b) the amount that

(i) is the part of the non-business income tax (as defined by subsection 126(7)) paid by the taxpayer for the particular taxation year to a government of a country other than Canada that is in respect of the particular amounts, and

(ii) would be deductible under subsection 126(1) by the taxpayer from the tax for the particular taxation year otherwise payable under this Part (within the meaning assigned by paragraph (a) of the definition "tax for the taxation year otherwise payable under this Part" in subsection 126(7)) by the taxpayer if

(A) the taxpayer had not deducted an amount, in respect of the particular amounts, under subsection (2), and

(B) paragraph 126(1.2)(a) did not apply.

(2) Subsection (1) applies to taxation years that begin after 2002, except that

(a) any election or form referred to in any of sections 94.1 to 94.3 of the Act, as enacted by subsection (1), made by a taxpayer is deemed to have been filed with the Minister of National Revenue

(i) on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, and

- (ii) in the taxpayer's return of income for the taxpayer's taxation year identified by the taxpayer in the election, if it is filed with the Minister of National Revenue in writing in the taxpayer's return of income for the taxpayer's taxation year that includes the day on which this Act is assented to;
- (b) for taxation years that begin before October 30, 2003, subparagraph (a)(ii) of the definition "exempt interest" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read as follows:
 - (ii) a qualifying entity, or
- (c) subject to paragraph (o), for taxation years that begin on or before ANNOUNCEMENT DATE, the definition "exempt business" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read without reference to the expression "(f) or";
- (d) subject to paragraph (o), for taxation years that begin on or before ANNOUNCEMENT DATE, subparagraph (d)(i) of the definition "exempt interest" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read without reference to the expression "(f) or";
- (e) for taxation years that begin on or before ANNOUNCEMENT DATE, the definition "investment property" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read without reference to its paragraph (k);
- (f) for taxation years that begin on or before ANNOUNCEMENT DATE, paragraph (c) of the definition "significant interest" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read as follows:
 - (c) if the other entity is a non-discretionary trust (as defined in subsection 17(15)), an interest as a beneficiary under the trust, if at that time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds such interests under the trust that have a fair market value of 25% or more of the fair market value of all the interests as beneficiaries under the trust.
- (g) for taxation years that begin on or before ANNOUNCEMENT DATE, subparagraph (b)(i) of the definition "specified interest" in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read as follows:
 - (i) the entity or individual is at that time a successor beneficiary (as defined by subsection 94(1)) under the trust, or
- (h) unless a taxpayer elects, by notifying the Minister of National Revenue in writing on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, that this paragraph not apply in respect of the taxpayer and a participating interest of the taxpayer, paragraph 94.1(2)(c) of the Act, as enacted by subsection (1), is in respect of the taxpayer and the participating interest for the taxpayer's taxation years that begin on or before ANNOUNCEMENT DATE to be read without reference to its subparagraph (ii);

(i) for taxation years that begin on or before ANNOUNCEMENT DATE, subsection 94.1(2) of the Act, as enacted by subsection (1), is to be read without reference to its paragraph (t);

(j) for taxation years that begin on or before ANNOUNCEMENT DATE, paragraph 94.2(9)(d) of the Act, as enacted by subsection (1), is to be read without reference to the expression “(whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any entity or individual)”;

(k) for taxation years that begin on or before ANNOUNCEMENT DATE, subparagraph (a)(ii) of the definition “exempt interest” in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read without reference to “(other than a controlled foreign affiliate)”;

(l) for taxation years that begin on or before ANNOUNCEMENT DATE, the description of A in the definition “income allocation” in subsection 94.3(1) of the Act, as enacted by subsection (1), is to be read as if its paragraph (f) were replaced by the following:

(f) this Act were read without reference to subsections 20(11) and (12) and 104(4) to (6),

(f.1) in the case where the particular taxpayer is a corporation resident in Canada, dividends received by the non-resident entity in the particular taxation year from a foreign affiliate of the particular taxpayer were included in computing the income of the non-resident entity for the particular taxation year only where

(i) the particular taxpayer did not have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) in the foreign affiliate at the time the dividends were received, or

(ii) taking into account the application of paragraphs (a) and (h), subsection 94.2(4) applied for the purpose of computing the non-resident entity’s income for the particular taxation year in respect of the non-resident entity’s participating interest in the foreign affiliate,

(m) for taxation years that begin on or before ANNOUNCEMENT DATE, paragraph (h) of the description of A in the definition “income allocation” in subsection 94.3(1) of the Act, as enacted by subsection (1), is to be read as follows:

(h) the expression “controlled foreign affiliate” in paragraph (a) of the definition “exempt interest” referred to a controlled foreign affiliate of the particular entity and not to a controlled foreign affiliate of the non-resident entity,

(n) subject to paragraph (o), for taxation years that begin on or before ANNOUNCEMENT DATE, subparagraphs 94.3(2)(b)(vi) to (ix) of the Act, as enacted by subsection (1), are to be read as follows:

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (f) of the definition “exempt foreign trust” in sub-

section 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount, or

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest.

and

(o) unless a trust elects under paragraph 17(2)(j) of this Act that that paragraph not apply in respect of it, for taxation years that begin on or before ANNOUNCEMENT DATE, in applying sections 94.1 to 94.4 of the Act, as enacted by subsection (1), in respect of an interest in the trust

(i) the reference to “paragraph (f)” is to be read as a reference to “paragraph (g)” in the definitions “exempt business”, “exempt interest” and “specified interest” in subsection 94.1(1) of the Act, as enacted by subsection (1), and in subparagraph 94.1(2)(c)(i) of the Act, as enacted by subsection (1),

(ii) paragraph (a) of the definition “foreign investment entity” in subsection 94.1(1) of the Act, as enacted by subsection (1), is to be read as follows:

(a) at the end of its taxation year that includes that time, it is an exempt foreign trust (as defined in subsection 94(1)) because of any of paragraphs (a) to (f) of that definition or because of paragraph (g) of that definition (read without reference to clause (g)(iii)(B) of that definition);

and

(iii) subparagraphs 94.3(2)(b)(vi) to (ix) of the Act, as enacted by subsection (1), are to be read as follows:

(vi) the particular participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (g) of the definition “exempt foreign trust” in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount, or

(vii) subsection 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest.

19. (1) The portion of subsection 95(1) of the Act before the definition “active business” is replaced by the following:

95. (1) In this subdivision (other than in sections 94 to 94.4),

(2) The portion of the definition “controlled foreign affiliate” in subsection 95(1) of the Act before paragraph (a) is replaced by the following:

“controlled
foreign
affiliate”
« société
étrangère
affiliée
contrôlée »

“controlled foreign affiliate”, at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(h) or that is, at that time, controlled by

(3) The formula in the definition “foreign accrual property income” in subsection 95(1) of the Act is replaced by the following:

$$(A + A.1 + A.2 + B) - (D + E + F + G + H)$$

(4) The description of C in the definition “foreign accrual property income” in subsection 95(1) of the Act is repealed.

(5) The definition “relevant tax factor” in subsection 95(1) of the Act is replaced by the following:

“relevant tax
factor”
« facteur fiscal
approprié »

“relevant tax factor”, of a person or partnership for a taxation year, means

(a) in the case of a corporation, or of a partnership all the members of which, other than non-resident persons, are corporations, the quotient obtained by the formula

$$1/(A - B)$$

where

A is the percentage set out in paragraph 123(1)(a), and

B is

(i) in the case of a corporation, the percentage that is the corporation’s general rate reduction percentage (as defined by section 123.4) for the taxation year, and

(ii) in the case of a partnership, the percentage that would be determined under subparagraph (i) in respect of the partnership if the partnership were a corporation whose taxation year is the partnership’s fiscal period, and

(b) in any other case, 2.2;

(6) The portion of subsection 95(2) of the Act before paragraph (a) is replaced by the following:

Application —
foreign
affiliates

(2) For the purposes of this subdivision (other than sections 94 to 94.4),

(7) Subsection 95(2) of the Act is amended by adding the following after paragraph (g.2):

(g.3) if in a particular taxation year of a particular foreign affiliate of a particular taxpayer, the particular foreign affiliate holds a participating interest, in a particular non-resident

entity (in this paragraph as defined by subsection 94.1(1)), sections 94.1 to 94.4 apply to the particular foreign affiliate in respect of the participating interest as if

- (i) the particular foreign affiliate were a taxpayer resident in Canada throughout the particular taxation year,
- (ii) paragraph (a) of the definition “exempt interest” in subsection 94.1(1) were read without reference to its subparagraph (i), unless, at the end of the particular non-resident entity’s taxation year that ends in the particular taxation year,

(A) where the particular taxpayer is not a partnership,

- (I) the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer,
- (II) the particular non-resident entity is a controlled foreign affiliate of the particular taxpayer, and
- (III) the particular non-resident entity would, were the particular foreign affiliate a corporation resident in Canada, be a controlled foreign affiliate of the particular foreign affiliate, or

(B) where the particular taxpayer is a partnership,

- (I) the particular foreign affiliate is a controlled foreign affiliate of the partnership,
- (II) the particular non-resident entity is a controlled foreign affiliate of the partnership, and
- (III) the particular non-resident entity is a controlled foreign affiliate of each taxpayer resident in Canada

- 1. that has, directly or indirectly, a partnership interest in the partnership, or
- 2. a controlled foreign affiliate of which is a member of the partnership,

(iii) an exempt interest (in this paragraph, as defined by subsection 94.1(1)) of the particular foreign affiliate in a non-resident entity included a participating interest

- (A) that is held, in the particular taxation year, by the particular foreign affiliate, and
- (B) that is, throughout the period, in the particular taxation year, during which the particular foreign affiliate held the participating interest, property used or held by the particular foreign affiliate principally for the purpose of gaining or producing income from a business that is not an investment business,

(iv) the definition “fresh-start year” in subsection 94.3(1) did not apply and a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the particular foreign affiliate, were a reference to a taxation year of the particular non-resident entity

(A) that ends in a taxation year of the particular foreign affiliate that begins after 2002,

(B) that begins immediately after a preceding taxation year of the particular non-resident entity at the end of which

- (I) the particular non-resident entity was not a foreign investment entity,
- (II) the particular foreign affiliate did not hold a participating interest in the particular non-resident entity (other than an exempt interest), or
- (III) the particular foreign affiliate was not a controlled foreign affiliate of the particular taxpayer,

(C) at the end of which the particular non-resident entity is a foreign investment entity in which the particular foreign affiliate holds a participating interest that is not an exempt interest, and

(D) at any time in which the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer,

(v) an election for the particular taxation year made under paragraph (a) of the definition “carrying value”, or paragraph (a) of the definition “financial statements”, in subsection 94.1(1), paragraph 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection 94.2(1), subparagraph 94.2(2)(b)(i) or 94.2(3)(b)(iii) or paragraph 94.3(3)(b) were required to be filed under that provision in respect of the particular foreign affiliate, by, and only by, the particular taxpayer, with the Minister on or before the filing-due date of the particular taxpayer for the particular taxpayer’s taxation year in which the particular taxation year ends,

(vi) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), or subparagraph 94.3(2)(b)(iii), to send the demand to the particular taxpayer,

(vii) the amount determined under the definition “deferral amount” in subsection 94.2(1) did not include the portion of that amount that can reasonably be considered to have accrued during the period that the particular foreign affiliate was not a foreign affiliate of any person described in any of subparagraphs (f)(iii) to (vii),

(viii) the reference in subsection 94.2(19) to “in computing the capital dividend account of the corporation” were read in respect of the particular foreign affiliate as a reference to “and the corporation is a foreign affiliate, of a taxpayer, to which paragraph 95(2)(g.3) applies, in computing the amount prescribed to be the foreign affiliate’s exempt surplus and taxable surplus in respect of the taxpayer”,

(ix) any form, information or notification, in respect of a participating interest in a non-resident entity held in the particular taxation year by the particular foreign affiliate, that is required under any of sections 94.1 to 94.4 to be filed or included with the particular foreign affiliate’s return of income for the particular taxation year were required to be filed or included with, and only with, the particular taxpayer’s return of

income for the particular taxpayer's taxation year in which the particular taxation year ends,

(x) designations and notifications made, and information provided, by the particular taxpayer in a form referred to in subparagraph (ix) were made or provided by the particular foreign affiliate,

(xi) for taxation years that begin on or before ANNOUNCEMENT DATE, in applying paragraph (f.1) of the description of A in the definition "income allocation" in subsection 94.3(1)

(A) the expression "the particular taxpayer" referred to the particular taxpayer rather than to the particular foreign affiliate, and

(B) the expression "foreign affiliate" referred to a foreign affiliate of the particular taxpayer and not to a foreign affiliate of the particular foreign affiliate, and

(xii) for taxation years that begin on or before ANNOUNCEMENT DATE, the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (h) of the description of A in that definition;

(8) Subsection 95(5) of the Act is replaced by the following:

Income bonds
or debentures
issued by
foreign
affiliates

(5) For the purposes of this subdivision (other than sections 94 to 94.4), an income bond or income debenture issued by a non-resident corporation is deemed to be a share of the capital stock of the corporation unless any interest or other similar periodic amount paid by the corporation on or in respect of the bond or debenture was, under the laws of the country in which the corporation was resident, deductible in computing the amount on which the corporation was liable to pay income or profits tax imposed by the government of that country.

(9) The portion of subsection 95(6) of the Act before paragraph (a) is replaced by the following:

Where rights
or shares
issued,
acquired or
disposed of to
avoid tax

(6) For the purposes of this subdivision (other than sections 90 and 94 to 94.4),

(10) Subsection 95(7) of the Act is replaced by the following:

Stock
dividends from
foreign
affiliates

(7) For the purposes of subsection 52(3) and this subdivision (other than sections 94 to 94.4), the amount of any stock dividend paid by a foreign affiliate of a corporation resident in Canada is deemed to be, in respect of the corporation, nil.

(11) Subsections (1) to (4), (6) and (7) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002, except that for taxation years that begin on or before ANNOUNCEMENT DATE, subparagraph 95(2)(g.3)(ii) of the Act, as enacted by subsection (7), is to be read as follows:

(ii) the expression “controlled foreign affiliate of the taxpayer” in paragraph (a) of the definition “exempt interest” in subsection 94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the particular foreign affiliate,

(12) Subsection (5) applies to the 2002 and subsequent taxation years.

(13) Subsections (8) to (10) apply to taxation years that begin after ANNOUNCEMENT DATE.

20. (1) Paragraph 96(1)(d) of the Act is amended by striking out the word “and” at the end of subparagraph (i), by adding the word “and” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) where at any time in a particular taxation year of the partnership the partnership’s property includes a participating interest in a particular non-resident entity (in this subparagraph as defined by subsection 94.1(1)), in applying sections 94.1 to 94.4 to the partnership for the particular taxation year in respect of the participating interest

(A) paragraph (a) of the definition “exempt interest” in subsection 94.1(1) were read without reference to its subparagraph (i), unless

(I) the taxpayer is a foreign affiliate of another taxpayer resident in Canada and the particular non-resident entity

1. is a controlled foreign affiliate of the other taxpayer, and

2. would, were the taxpayer resident in Canada, be a controlled foreign affiliate of the taxpayer, or

(II) the particular non-resident entity is a controlled foreign affiliate of the taxpayer and the taxpayer is not a foreign affiliate of another taxpayer resident in Canada,

(B) where the taxpayer is a foreign affiliate of another taxpayer resident in Canada, an exempt interest (in this subparagraph, as defined by subsection 94.1(1)) of the partnership in a non-resident entity included a participating interest

(I) that is, in the particular taxation year, the partnership’s property, and

(II) that is, throughout the period, in the particular taxation year, during which the participating interest was the partnership’s property, property used or held by the partnership principally for the purpose of gaining or producing income from a business that is not an investment business (in this subclause, within the meaning assigned by section 95),

(C) the definition “fresh-start year” in subsection 94.3(1) did not apply and a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the partnership, were a reference to a taxation year of the particular non-resident entity

(I) that ends in a taxation year of the partnership that begins after 2002,

(II) that begins immediately after a preceding taxation year of the particular non-resident entity, at the end of which the particular non-resident entity was not a foreign investment entity or at the end of which the partnership property did not include a participating interest in the particular non-resident entity (other than an exempt interest, in this subparagraph as defined in subsection 94.1(1) as modified by this subparagraph), and

(III) at the end of which the particular non-resident entity is a foreign investment entity in which the partnership owns a participating interest that is not an exempt interest,

(D) the expression “in the return of income for which the taxpayer elects” in paragraph 94.1(2)(h) were replaced by the expression “in respect of which a member of the taxpayer elects”,

(E) subparagraph 94.1(2)(h)(ii) were replaced by the following:

(ii) the non-resident entity would, if subsection 93.1(1) applied in respect of each member (resident in Canada) of the taxpayer at the end of the non-resident entity’s taxation year referred to in subparagraph (i), be a foreign affiliate of each such member in respect of which each such member would have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(F) subparagraph 94.1(2)(h)(iii) were replaced by the following:

(iii) an entity that was at any time a member of the taxpayer has not made in respect of the taxpayer any other election under this paragraph in respect of the non-resident entity and no member of the taxpayer is a partnership;

(G) an election for a particular taxation year of the partnership made under paragraph (a) of the definition “carrying value”, or paragraph (a) of the definition “financial statements”, in subsection 94.1(1), paragraph 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection 94.2(1), subparagraph 94.2(2)(b)(i) or (3)(b)(iii), or paragraph 94.3(3)(b), were required to be filed under that provision in respect of the partnership by the taxpayer with the Minister on or before the taxpayer’s filing-due date for the taxpayer’s taxation year in which the particular taxation year ends,

(H) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(i) or (p) to (r) or 94.2(2)(d), or subparagraph 94.3(2)(b)(iii), to send the demand to the taxpayer,

(I) any form, information or notification, in respect of a participating interest, in a non-resident entity, that is partnership property in the particular taxation year, that is required under any of sections 94.1 to 94.4 to be filed or included with a return of income were required to be filed or included with the taxpayer’s return of income for the taxpayer’s taxation year in which the particular taxation year ends,

(J) designations and notifications made, and information provided, by the taxpayer in the form referred to in clause (I) were made or provided by the partnership, and

(K) for taxation years that begin on or before ANNOUNCEMENT DATE, the definition “income allocation” in subsection 94.3(1) were read without reference to paragraph (h) of the description of A;

(2) Section 96 of the Act is amended by adding the following after subsection (1.8):

Application of
ss. 94.1 to 94.4

(1.9) If an exempt taxpayer (as defined in subsection 94.1(1)) for a taxation year is a member of a partnership at any time in the year, in applying paragraphs (1)(f) and (g) and 53(1)(e) and (2)(c) to the taxpayer for a fiscal period of the partnership that ends in the year this Act is to be read without reference to sections 94.1 to 94.4.

(3) The portion of subsection 96(3) of the Act before paragraph (a) is replaced by the following:

Agreement or
election of
partnership
members

(3) If a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer’s income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 13(4), (4.2) and (16) and 14(1.01), (1.02) and (6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04, subsection 86.1(2), sections 94.1 to 94.3, paragraph 95(2)(g.2) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this Act were read without reference to this subsection, would be a valid agreement, designation or election,

(4) Subsection 96(9) of the Act is replaced by the following:

Application of
foreign
partnership
rule

(9) For the purposes of applying subsection (8) and this subsection,

(a) where it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (8), the member is deemed not to be resident in Canada; and

(b) where at any time a particular partnership is a member of another partnership,

(i) each person or partnership that is, at that time, a member of the particular partnership is deemed to be a member of the other partnership at that time,

(ii) each person or partnership that becomes a member of the particular partnership at that time is deemed to become a member of the other partnership at that time, and

(iii) each person or partnership that ceases to be a member of the particular partnership at that time is deemed to cease to be a member of the other partnership at that time.

(5) Subsections (1) and (2) apply to fiscal periods that begin after 2002, except that for fiscal periods that begin on or before ANNOUNCEMENT DATE,

(a) clause 96(1)(d)(iii)(A) of the Act, as enacted by subsection (1), is to be read as follows:

(B) the expression “controlled foreign affiliate of the taxpayer” in paragraph (a) of the definition “exempt interest” in subsection 94.1(1) referred to a controlled foreign affiliate of the taxpayer and not to a controlled foreign affiliate of the partnership,

and

(b) clause 96(1)(d)(iii)(F) of the Act, as enacted by subsection (1), is to be read as follows:

(F) the expression “the taxpayer has not made any other election” in subparagraph 94.1(2)(h)(iii) were replaced by the expression “a member of the taxpayer has not made in respect of the taxpayer any other election”,

(6) Subsection (3) applies to taxation years that end after February 27, 2000. However, subsection 96(3) of the Act, as enacted by subsection (3), is

(a) before December 21, 2002, to be read without reference to “, (4.2)”; and

(b) before 2003, to be read without reference to “subsections 94.1 to 94.3, paragraph 95(2)(g.2)”.

(7) Subsection (4) applies to fiscal periods that begin after June 22, 2000.

21. (1) The portion of subsection 97(2) of the Act before paragraph (a) is replaced by the following:

(2) Notwithstanding any other provision of this Act other than subsection 13(21.2), where a taxpayer at any time in a taxation year disposes of any property (other than a specified participating interest) that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

22. (1) Section 98 of the Act is amended by adding the following after subsection (6):

(7) If at a particular time a partnership ceases to exist, the partnership is, at the time (in this subsection referred to as the “disposition time”) that is immediately before the time that is immediately before the time that is immediately before the particular time, deemed

(a) to have disposed of each of its properties that is at the disposition time a specified participating interest for proceeds of disposition equal to the property’s fair market value at the disposition time; and

Rules where
election by
partners

Where a
partnership
property is a
specified
participating
interest

(b) to have acquired the property immediately after the disposition time at a cost equal to that fair market value.

(2) Subsection (1) applies to fiscal periods that begin after 2002.

23. (1) Subparagraph 104(4)(a)(i.1) of the Act is replaced by the following:

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) (as those paragraphs read in their application to taxation years that began before 2003), (5.2)(c) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust,

(2) Subsection 104(4) of the Act is amended by adding the following after paragraph (a.4)

(a.5) where the trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the taxation year, the day (in that taxation year) on which, because a contributor (in this paragraph, as defined by subsection 94(1)) either ceases to be resident in Canada or ceases to be a contributor to the trust because of the application at any time of paragraph 94(2)(t), there is no resident contributor (in this paragraph, as defined by subsection 94(1)) to the trust (or the only resident contributors to the trust are entities (in this paragraph, as defined by subsection 94(1)) each of which is an entity the maximum amount recoverable from which under the provisions referred to in paragraph 94(3)(d) is limited to the entities' recovery limits determined under subsection 94(8)), unless subsection 94(5) applies in respect of the contributor ceasing on the day to be a resident contributor to the trust;

(3) Paragraph 104(4)(c) of the Act is replaced by the following:

(c) the day that is 21 years after any day (other than a day determined under any of paragraphs (a) to (a.5)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

(4) Section 104 of the Act is amended by adding the following after subsection (4):

(4.1) In determining whether property is capital property for the purpose of subsection (4), this Act is to be read without reference to subparagraph 39(1)(a)(ii.3).

(5) The portion of subsection 104(6) of the Act before paragraph (a) is replaced by the following:

(6) Subject to subsections (7) to (7.1), for the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

(6) Section 104 of the Act is amended by adding the following after subsection (7):

(7.01) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in computing its income for the year is the amount, if any, by which

Mark-to-market property

Deduction in computing income of trust

Trusts deemed to be resident in Canada

(a) the maximum amount that, if this Act were read without reference to this subsection, would be deductible under subsection (6) in computing its income for the year,

exceeds

(b) the total of

(i) the portion of the trust's designated income for the year (within the meaning assigned by section 210) that became payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

(ii) all amounts each of which is determined by the formula

$$A \times B$$

where

A is an amount (other than an amount described in subparagraph (i)) that

(A) is paid or credited in the year to the trust,

(B) would, if this Act were read without reference to subparagraph 94(3)(a)(viii) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and

(C) is payable in the year by the trust to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

B is

(A) 0.35, if the trust can establish to the satisfaction of the Minister that the non-resident beneficiary to whom the amount described in the description of A is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited, and

(B) 0.6, in any other case.

(7) Paragraph 104(21.3)(a) of the Act is replaced by the following:

(a) the total of all amounts each of which is an allowable capital loss (other than an allowable business investment loss) of the trust for the year from the disposition of a capital property, and

(8) Subsection 104(24) of the Act is replaced by the following:

(24) For the purposes of subparagraph 53(2)(h)(i.1), paragraph (c) of the definition "specified charity" in subsection 94(1), subsection 94(8) and subsections (6), (7), (7.01), (13) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

(9) Subsections (1) to (6) and (8) apply to trust taxation years that begin after 2002. Subsections (2), (3), (5), (6) and (8) also apply to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act.

(10) Subsection (7) applies to trust taxation years that begin after 2000.

24. (1) Paragraph 107(1.1)(b) of the Act is amended by striking out the word “or” at the end of subparagraph (i), by adding the word “or” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) the interest is a participating interest in a foreign investment entity.

(2) Section 107 of the Act is amended by adding the following after subsection (4):

(4.01) Subsection (2.1) applies (and subsection (2) does not apply) at any time to a distribution to a beneficiary by a trust of a property that is at that time a specified participating interest.

(3) Subsection (1) applies to taxation years that begin after 2002.

(4) Subsection (2) applies to distributions that occur in taxation years that begin after 2002.

25. (1) Subsection 107.4(1) of the Act is amended by striking out the word “and” at the end of paragraph (i), by adding the word “and” at the end of paragraph (j) and by adding the following after paragraph (j):

(k) the property is not, immediately before the disposition, a specified participating interest.

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

26. (1) The definition “income interest” in subsection 108(1) of the Act is replaced by the following:

“income interest”, of a taxpayer in a trust, means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, at any time after 1999

(a) subject to paragraph (b), includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right; and

(b) does not include a participating interest in respect of which subsection 94.1(3) or 94.2(9) applies to the taxpayer for the taxpayer’s taxation year that includes that time;

Specified
participating
interest

“income
interest”
« participation
au revenu »

(2) The portion of the definition “cost amount” in subsection 108(1) before paragraph (a) is replaced by the following:

“cost amount”
« coût
indiqué »

“cost amount” to a taxpayer at any time of a capital interest or part of it, as the case may be, in a trust, means (notwithstanding subsection 248(1) and except for the purposes of section 107.4 and, if that time is in a taxation year of the trust that began before 2003, except in respect of a capital interest in a trust that is at that time a foreign affiliate of the taxpayer),

(3) Paragraph (a.1) of the definition “trust” in subsection 108(1) of the Act is replaced by the following:

(a.1) a trust (other than a trust described in paragraph (a) or (d), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(4) The portion of subsection 108(3) of the Act before paragraph (a) is replaced by the following:

Income of a
trust in certain
provisions

(3) For the purposes of the definitions “income interest” in subsection (1), “lifetime benefit trust” in subsection 60.011(1) and “exempt foreign trust” in subsection 94(1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition “pre-1972 spousal trust” in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

(5) The portion of subsection 108(7) of the Act before paragraph (a) is replaced by the following:

Interests
acquired for
consideration

(7) For the purposes of paragraph 53(2)(h), paragraph (b) of the definition “exempt amount” in subsection 94(1), subsection 107(1), paragraph (j) of the definition “excluded right or interest” in subsection 128.1(10) and paragraph (b) of the definition “personal trust” in subsection 248(1),

(6) Subsections (1) and (3) apply to trust taxation years that begin after 2002. Subsection (3) also applies to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act.

(7) Subsection (2) applies after 2001.

(8) Subsection (4) applies to trust taxation years that begin after 2000.

(9) Subsection (5) applies in determining after 2003 whether an interest in a trust has been acquired for consideration.

27. (1) Clause 113(1)(b)(i)(A) of the Act is replaced by the following:

(A) the corporation's relevant tax factor for the year

(2) Clause 113(1)(c)(i)(B) of the Act is replaced by the following:

(B) the corporation's relevant tax factor for the year, and

(3) Subsections (1) and (2) apply after 2000.

28. (1) The portion of section 114 of the Act before paragraph (a) is replaced by the following:

114. Notwithstanding subsection 2(2) and subject to subsection 94.2(5), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

(2) Subsection (1) applies to taxation years that begin after 2002.

29. (1) Subparagraph 115(1)(a)(vii) of the Act is replaced by the following:

(vii) in the case of an authorized foreign bank,

(A) the amount claimed by the bank to the extent that the inclusion of the amount in income

(I) increases any amount deductible by the bank under subsection 126(1) for the year, and

(II) does not increase an amount deductible by the bank under section 127 for the year, and

(B) all amounts required by paragraph 12(1)(k) to be included in computing the bank's income, except to the extent that

(I) subparagraph (ii) or clause (A) applies to those amounts, or

(II) those amounts are in respect of a business of the bank that is not its Canadian banking business,

(2) Subsection (1) applies to taxation years that begin after ANNOUNCEMENT DATE.

30. (1) The portion of subsection 122(2) of the Act before paragraph (a) is replaced by the following:

(2) Subsection (1) does not apply for a taxation year of an *inter vivos* trust that is not a mutual fund trust and that

(2) Subsection 122(2) of the Act is amended by adding the following after paragraph (d):

(d.1) was not a trust to which a contribution (as defined by section 94) was made after June 22, 2000;

(3) Subsections (1) and (2) apply to trust taxation years that begin after 2002.

Individual
resident in
Canada for
only part of
year

Where
subsection (1)
does not apply

31. (1) Paragraph 126(1)(a) of the Act is replaced by the following:

(a) the part of any non-business income tax paid by the taxpayer for the year to the government of a country other than Canada that the taxpayer claims,

(2) Section 126 of the Act is amended by adding the following after subsection (1.1):

Exception

(1.2) Subsection (1) does not apply to non-business income tax paid by

(a) a taxpayer, in respect of a particular amount that is included in computing, in respect of the taxpayer, the amount determined under subparagraph 94.4(2)(a)(i) in respect of a participating interest of the taxpayer, if the taxpayer made a deduction under subsection 94.4(3) in respect of the particular amount; and

(b) a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(3) Subsections (1) and (2) apply to taxation years that begin after 2002.

32. (1) Section 128.1 of the Act is amended by adding the following after subsection (1):

Trusts subject to s. 94(3)

(1.1) Paragraph (1)(b) does not apply, at a time in a particular taxation year of a trust, to the trust if the trust is resident in Canada for the particular taxation year for the purpose of computing its income.

(2) Subsection (1) applies to trust taxation years that begin after 2002. Subsection (1) also applies to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act.

33. (1) Paragraph 149(10)(c) of the Act is replaced by the following:

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 94.1 to 94.4, 111 and 126, subsections 127(5) to (35) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

(2) Subsection (1) applies to each corporation that, after 2002, becomes or ceases to be exempt from tax on its taxable income under Part I of the Act.

34. (1) Subparagraph 152(4)(b)(vi) of the Act is replaced by the following:

(vi) is made in order to give effect to the application of subsection 94(9) or (10) or 118.1(15) or (16).

(2) Subsection (1) applies after 2002.

35. (1) Section 160 of the Act is amended by adding the following after subsection (2):

Assessment

(2.1) The Minister may at any time assess a taxpayer in respect of any amount payable because of paragraph 94(3)(*d*) or (*e*) and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(2) The portion of subsection 160(3) of the Act before paragraph (a) is replaced by the following:

Discharge of liability

(3) Where a particular taxpayer has become jointly and severally, or solidarily, liable with another taxpayer under this section or because of paragraph 94(3)(*d*) or (*e*) in respect of part or all of a liability under this Act of the other taxpayer,

(3) Subsections (1) and (2) apply to assessments made after 2002.

36. (1) Paragraph (c) of the description of A in subsection 162(10.1) of the French version of the Act is replaced by the following:

c) si la déclaration est à produire en application de l'article 233.2 à l'égard d'une fiducie, 5 % du total des montants représentant chacun la juste valeur marchande, au moment où il a été fait, d'un apport que la personne ou la société de personnes a fait à la fiducie avant la fin de la dernière année d'imposition de celle-ci pour laquelle la déclaration doit être produite,

(2) Paragraph (d) of the description of A in subsection 162(10.1) of the English version of the Act is replaced by the following:

(d) where the return is required to be filed under section 233.2 in respect of a trust, 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required,

(3) Section 162 of the Act is amended by adding the following after subsection (10.1):

Application to trust contributions

(10.11) In paragraph (*d*) of the description of A in subsection (10.1), subsections 94(1), (2) and (9) apply, except that the references to the expression “(other than a restricted property)” in the definition “arm’s length transfer” in subsection 94(1) are to be read as references to the expression “(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)”.

(4) The portion of subsection 162(10.3) of the Act before paragraph (a) is replaced by the following:

Application to partnerships

(10.3) For the purposes of paragraph (*f*) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

(5) Subsection 162(10.4) of the Act is repealed.

(6) Subsections (1) to (5) apply to returns in respect of taxation years that begin after 2002. Subsections (1) to (5) also apply to returns in respect of taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) or (b) of this Act.

37. (1) Paragraph 163(2.4)(b) of the Act is replaced by the following:

(b) where the return is required to be filed under section 233.2 in respect of a trust, the greater of

(i) \$24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required;

(2) Section 163 of the Act is amended by adding the following after subsection (2.4):

Application to
trust
contributions

(2.41) In subparagraph (2.4)(b)(ii), subsections 94(1), (2) and (9) apply, except that the references to the expression “(other than a restricted property)” in the definition “arm’s length transfer” in subsection 94(1) are to be read as references to the expression “(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)”.

(3) The portion of subsection 163(2.6) of the Act before paragraph (a) is replaced by the following:

Application to
partnerships

(2.6) For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

(4) Subsection 163(2.91) of the Act is repealed.

(5) Subsections (1) to (4) apply to returns in respect of taxation years that begin after 2002. Subsections (1) to (4) also apply to returns in respect of taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) or (b) of this Act.

38. (1) Subsection 215(1) of the Act is replaced by the following:

Withholding
and remittance
of tax

215. (1) When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Act were read without reference to subparagraph 94(3)(a)(viii) and to subsection 216.1(1), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of the tax and forthwith remit that amount to the

Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form.

(2) Subsection (1) applies to trust taxation years that begin after 2002. It also applies to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act.

39. (1) Section 216 of the Act is amended by adding the following after subsection (4):

(4.1) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the trust, an amount to the Receiver General in payment of tax on rent on real or immovable property or on a timber royalty may elect in prescribed form filed with the Minister under this subsection not to remit under subsection 215(3) in respect of amounts received after the election is made, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the trust, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the trust on account of the trust's tax under Part I; and

(b) if the trust does not file a return for the year as required by section 150, or does not pay the tax that the trust is liable to pay under Part I for the year within the time required by that Part, on the expiration of the time for filing or payment, as the case may be, pay to the Receiver General, on account of the trust's tax under Part I, the amount by which the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty exceeds the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

(2) Subsection (1) applies to trust taxation years that begin after 2002, except that an election referred to in subsection 216(4.1) of the Act, as enacted by subsection (1), is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which this Act is assented to.

40. (1) The definitions "specified beneficiary" and "specified foreign trust" in subsection 233.2(1) of the Act are repealed.

(2) Subsections 233.2(2) and (3) of the Act are replaced by the following:

(2) In this section and paragraph 233.5(c.1), subsections 94(1), (2) and (10) to (13) apply, except that the references to the expression "(other than a restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the

Optional
method of
payment

Rule of
application

expression “(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)”.

(3) Subsection 233.2(4) of the Act is replaced by the following:

Filing
information on
foreign trusts

(4) A person shall file an information return in prescribed form, in respect of a taxation year of a particular trust (other than an exempt trust or a trust described in any of paragraphs (c) to (h) of the definition “exempt foreign trust” in subsection 94(1)), with the Minister on or before the person’s filing-due date for the person’s taxation year in which the particular trust’s taxation year ends if

(a) the particular trust is non-resident at a specified time in that taxation year of the particular trust;

(b) the person is a contributor, a connected contributor or a resident contributor to the particular trust; and

(c) the person

(i) is resident in Canada at that specified time, and

(ii) is not, at that specified time,

(A) a mutual fund corporation,

(B) a non-resident-owned investment corporation,

(C) a person all of whose taxable income for the person’s taxation year that includes that time is exempt from tax under Part I,

(D) a mutual fund trust,

(E) a trust described in any of paragraphs (a) to (e.1) of the definition “trust” in subsection 108(1),

(F) a registered investment,

(G) a trust in which all persons beneficially interested are persons described in clauses (A) to (F), or

(H) a person who is a contributor to the particular trust by reason only of being a contributor to a trust described in any of clauses (C) to (G).

Similar
arrangements

(4.1) In this section and sections 162, 163 and 233.5, a person’s obligations under subsection (4) (except to the extent that they are waived in writing by the Minister) are to be determined as if a transfer or loan were a contribution to which paragraph (4)(b) applied, an arrangement or entity were a non-resident trust throughout the calendar year that includes the time referred to in paragraph (a) and that calendar year were a taxation year of the arrangement or entity, if

(a) the person at any time, directly or indirectly, transferred or loaned the property to be held

(i) under the arrangement and the arrangement is governed by laws that are not laws of Canada or a province, or

(ii) by the entity and the entity is a non-resident entity (as defined by subsection 94.1(1));

(b) the transfer or loan is not an arm's length transfer;

(c) the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q);

(d) the arrangement or entity is not a trust in respect of which the person would, if this Act were read without reference to this subsection, be required to file an information return for a taxation year that includes that time; and

(e) the arrangement or entity is, for a taxation year or fiscal period of the arrangement or entity that includes that time, not

(i) an exempt foreign trust,

(ii) a foreign affiliate in respect of which the person is a reporting entity (within the meaning assigned by subsection 233.4(1)), or

(iii) an exempt trust.

(4) Subsections (1) to (3) apply to returns in respect of trust taxation years that begin after 2002. Subsections (1) to (3) also apply to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) or (b) of this Act.

However, for trust taxation years that end on or before ANNOUNCEMENT DATE, paragraphs 233.2(4)(a) and (b) of the Act, as enacted by subsection (3), are to be read as follows:

(a) the particular trust is non-resident at the end of that taxation year of the particular trust;

(b) a contribution has been made by the person to the particular trust at any time in that taxation year of the particular trust or in a preceding taxation year of the particular trust; and

(5) A return required to be filed by a person because of subsection 233.2(4) of the Act, as enacted by subsection (3), is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the person's filing-due date for the person's taxation year that includes the day on which this Act is assented to.

41. (1) Subparagraph (a)(iv) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act is replaced by the following:

(iv) la participation dans une fiducie non-résidente,

(2) Paragraph (a) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act is amended by adding the following after subparagraph (iv):

(iv.1) l'intérêt dans une police d'assurance qui est réputé, par le paragraphe 94.2(11), être une participation déterminée dans une entité non-résidente,

(3) Subparagraph (b)(iii) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act is repealed.

(4) Paragraph (d) of the definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is replaced by the following:

(d) an interest in a non-resident trust,

(5) The definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is amended by adding the following after paragraph (d):

(d.1) an interest in an insurance policy that is deemed by subsection 94.2(11) to be a participating interest in a non-resident entity,

(6) Paragraph (f) of the definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is repealed.

(7) Subsections (1), (3), (4) and (6) apply to returns in respect of trust taxation years that begin after 2002. Subsections (1), (3), (4) and (6) also apply to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 17(2)(a) or (b) of this Act.

(8) Subsections (2) and (5) apply to returns for taxation years that begin after 2002.

42. (1) Subsection 233.4(1) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).

(2) Subparagraph 233.4(1)(c)(ii) of the Act is replaced by the following:

(ii) of which a non-resident corporation is a foreign affiliate at any time in the fiscal period.

(3) The portion of subsection 233.4(2) of the Act before paragraph (a) is replaced by the following:

(2) For the purpose of this section, in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

(4) Subsections (1) to (3) apply to taxation years and fiscal periods that begin after 2002. Subsections (1) to (3) also apply to taxation years and fiscal periods that begin

(a) after 2000, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2001 or 2002 and the trust makes a valid election under paragraph 17(2)(a) of this Act; and

(b) after 2001, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2002 and the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act.

43. (1) Paragraph 233.5(c) of the Act is replaced by the following:

(c) if the return is required to be filed under section 233.2 in respect of a trust, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 and before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that began before 2003 or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2 in respect of each taxation year of the trust that began before 2003;

(c.1) if the return is required to be filed under section 233.2, at the time of each contribution (determined with reference to subsection 233.2(2)) made by the person or partnership after June 22, 2000 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2;

(c.2) if the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate for the purpose of that section of the person or partnership, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.4; and

(2) Subsection (1) applies to returns in respect of taxation years that begin after 2002. Subsection (1) also applies in respect of taxation years that begin

(a) in 2001 or 2002, if the trust makes a valid election under paragraph 17(2)(a) of this Act, in which case section 233.5 of the Act shall be read, in respect of the trust, without reference to its paragraph (c), as enacted by subsection (1); and

(b) in 2002, if the trust makes a valid election under paragraph 17(2)(a) or (b) of this Act, in which case section 233.5 of the Act shall be read, in respect of the trust, without reference to its paragraph (c), as enacted by subsection (1).

44. (1) The definition “amount” in subsection 248(1) of the Act is amended by striking out the word “and” at the end of paragraph (b) and by adding the following after paragraph (b):

(b.1) in the case of a stock dividend paid by a corporation that is, when the dividend is paid, a non-resident corporation, the “amount” of any stock dividend is, except where subsection 95(7) applies to the dividend, the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment, and

(2) The definition “controlled foreign affiliate” in subsection 248(1) of the Act is replaced by the following:

“controlled
foreign
affiliate”
« société
étrangère
affiliée
contrôlée »

“controlled foreign affiliate” has, except as expressly otherwise provided in this Act, the meaning assigned by subsection 95(1);

(3) The definition “cost amount” in subsection 248(1) of the Act is amended by adding the following after paragraph (c.1):

(c.2) where the cost at that time to the taxpayer of the property is determined under subsection 94.2(13), the cost so determined,

(4) The definition “inventory” in subsection 248(1) of the Act is replaced by the following:

“inventory”
« inventaire »

“inventory” means a description of property of a taxpayer (other than a property in respect of which subsection 94.1(4) or 94.2(3) applies to the taxpayer for a taxation year) the cost or value of which is relevant in computing the taxpayer’s income from a business for a taxation year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

(5) The definition “share” in subsection 248(1) of the Act is replaced by the following:

“share”
« action »

“share”, except as the context otherwise requires, means a share or a fraction of a share of the capital stock of a corporation and, for greater certainty, a share of the capital stock of a corporation includes a share of the capital of a cooperative corporation (within the meaning assigned by subsection 136(2)) and a share of the capital of a credit union;

(6) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

“foreign
accrual
property
income”
« *revenu
étranger
accumulé, tiré
de biens* »

“foreign accrual property income” has the meaning assigned by section 95;

“foreign
investment
entity”
« *entité de
placement
étrangère* »

“foreign investment entity” has the meaning assigned by section 94.1;

“participating
interest”
« *participation
déterminée* »

“participating interest” has the meaning assigned by section 94.1;

“specified
participating
interest”
« *participation
déterminée
désignée* »

“specified participating interest”, means a property of a taxpayer that is

(a) a participating interest of the taxpayer, other than an exempt interest (as defined by subsection 94.1(1)) of the taxpayer, in a foreign investment entity, or

(b) a participating interest of the taxpayer in a tracking entity (in this paragraph, as defined by subsection 94.2(1)), other than

(i) an exempt interest (as would be defined by subsection 94.1(1) if the definition “exempt interest” in that subsection were read without reference to subparagraphs (a)(i) and (ii) of that definition) of the taxpayer, in a tracking entity, or

(ii) a participating interest in respect of which subsection 94.2(9) does not apply to the taxpayer solely because of paragraph 94.2(9)(e);

(7) Subsection 248(3) of the Act is replaced by the following:

Certain
arrangements
under civil law

(3) For the purposes of this Act,

(a) if at any time property is subject to a usufruct, right of use or habitation, or substitution,

(i) the usufruct, right of use or habitation, or substitution, as the case may be, is deemed to be at that time

(A) a trust, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, is created by will, a trust created by will,

(ii) the property is deemed

(A) where the usufruct, right of use or habitation, or substitution, as the case may be, arises on the death of a testator, to have been transferred to the trust on and as a consequence of the death of the testator, and not otherwise, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, arises otherwise, to have been transferred (at the time it first became subject to the usufruct, right of use or habitation, or substitution, as the case may be) to the trust by the person that granted the usufruct, right of use or habitation, or substitution, and

(iii) the property is deemed to be, throughout the period in which it is subject to the usufruct, right of use or habitation, or substitution, as the case may be, held by the trust, and not otherwise;

(b) if at any time property is property of a foundation (other than a foundation that is at that time a corporation or trust determined without reference to this paragraph),

(i) the foundation is deemed to be at that time

(A) a trust, and

(B) where the foundation is created by will, a trust created by will,

(ii) the property is deemed to have been transferred (at the time it first became property of the foundation) to the trust by the person from whom the foundation acquired the property, and

(iii) the property is deemed to be, throughout the period in which it is property of the foundation, held by the trust, and not otherwise;

(c) an arrangement (other than a partnership or an arrangement that is a trust determined without reference to this paragraph) is deemed to be a trust and property subject to rights and obligations under the arrangement is, if the arrangement is deemed by this paragraph to be a trust, deemed to be held in trust and not otherwise, where the arrangement

(i) is established before October 31, 2003 by or under a written contract that

(A) is governed by the laws of the Province of Quebec, and

(B) provides that, for the purposes of this Act, the arrangement shall be considered to be a trust, and

(ii) creates rights and obligations that are substantially similar to the rights and obligations under a trust (determined without reference to this subsection);

(d) a person who has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of property that is referred to in any of paragraphs (a) to (c) is deemed to be beneficially interested in the trust; and

(e) notwithstanding that a property is at any time subject to a servitude, the property is deemed to be beneficially owned by a person at that time if, at that time, the person has in relation to the property

(i) the right of ownership,

(ii) a right as a lessee under an emphyteusis, or

(iii) a right as a beneficiary in a trust.

(8) Subsection (1) applies to dividends declared on or ANNOUNCEMENT DATE.

(9) Subsections (2), (3), (5) and (6) apply to taxation years that begin after 2002.

(10) Subsection (4) applies to fiscal periods that begin after 2002.

(11) Subsection (7) applies to taxation years that begin after October 30, 2003.

2001, c. 17

INCOME TAX AMENDMENTS ACT, 2000

45. (1) Paragraph 53(2)(a) of the *Income Tax Amendments Act, 2000* is replaced by the following:

(a) in respect of transfers that occur in 2000, 2001 or 2002, for the purpose of subsection 73(1) of the Act, as enacted by subsection (1), the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it reads in its application to taxation years that began before 2003;

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

46. (1) Subsection 80(19) of the Act is replaced by the following:

(19) Subsections (1) to (4) apply to the 2000 and subsequent taxation years except that, in respect of transfers in 2000, 2001 or 2002, for the purposes of subsection 107(1) of the Act, as enacted by this section, the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it read in its application to taxation years that began before 2003.

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

PART 2

GENERAL AMENDMENTS TO THE INCOME TAX ACT AND OTHER ACTS AS A CONSEQUENCE

INCOME TAX ACT

47. (1) Paragraph 4(3)(a) of the *Income Tax Act* is replaced by the following:

(a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (x), apply either wholly or in part to a particular source or to sources in a particular place; and

(2) Subsection (1) applies to the 2002 and subsequent taxation years.

48. (1) Section 6 of the Act is amended by adding the following after subsection (3):

(3.1) If an amount (other than an amount to which paragraph (1)(a) applies because of subsection (11)) is receivable at the end of a taxation year by a taxpayer in respect of a

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Supp.)

Amount
receivable for
covenant

covenant, agreed to by the taxpayer more than 36 months before the end of that taxation year, with reference to what the taxpayer is, or is not, to do, and the amount would be included in the taxpayer's income for the year under this subdivision if it were received by the taxpayer in the year, the amount

(a) is deemed to be received by the taxpayer at the end of the taxation year for services rendered as an officer or during the period of employment; and

(b) is deemed not to be received at any other time.

(2) Subsection 6(15.1) of the French version of the Act is replaced by the following:

Montant remis

(15.1) Pour l'application du paragraphe (15), le « montant remis » à un moment donné sur une dette émise par un débiteur s'entend au sens qui serait donné à cette expression par le paragraphe 80(1) si, à la fois :

a) la dette était une dette commerciale, au sens du paragraphe 80(1), émise par le débiteur;

b) il n'était pas tenu compte d'un montant inclus dans le calcul du revenu en raison du règlement ou de l'extinction de la dette à ce moment;

c) il n'était pas tenu compte des alinéas f) et h) de l'élément B de la formule figurant à la définition de « montant remis » au paragraphe 80(1);

d) il n'était pas tenu compte des alinéas 80(2)b) et q).

(3) Subsection (1) applies to amounts receivable in respect of a covenant agreed to after October 7, 2003.

(4) Subsection (2) applies to taxation years that end after February 21, 1994.

49. (1) The portion of subsection 7(7) of the Act before the definition “qualifying person” is replaced by the following:

Definitions

(7) The following definitions apply in this section and in subsection 47(3), paragraphs 53(1)(j), 110(1)(d) and (d.01) and subsections 110(1.5) to (1.8) and (2.1).

(2) Subsection (1) applies after 1998. However,

(a) it does not apply to a right under an agreement to which subsection 7(7) of the Act, as enacted by subsection 3(7) of the Income Tax Amendments Act, 1998, does not (except for the purpose of applying paragraph 7(3)(b) of the Act) apply; and

(b) before 2000, the portion of subsection 7(7) of the Act, as enacted by subsection (1), before the definition “qualifying person” is to be read as follows:

(7) The definitions in this subsection apply in this section and in paragraph 110(1)(d) and subsections 110(1.5) to (1.8).

50. (1) Paragraph 8(1)(b) of the Act is replaced by the following:

Legal
expenses of
employee

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that,

if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer's income;

(2) The portion of paragraph 8(1)(i) of the Act before subparagraph (i) is replaced by the following:

(i) an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

(3) Subsection (1) applies to amounts paid in the 2001 and subsequent taxation years.

51. (1) Paragraph 12(1)(x) of the Act is amended by adding the following after subparagraph (v):

(v.1) is not an amount received by the taxpayer in respect of a restrictive covenant, as defined by subsection 56.4(1), that was included, under subsection 56.4(2), in computing the income of a person related to the taxpayer,

(2) Subparagraph 12(1)(x)(vii) of the French version of the Act is replaced by the following:

(vii) ne réduit pas, en application du paragraphe (2.2) ou 13(7.4) ou de l'alinéa 53(2)s), le coût ou coût en capital du bien ou le montant de la dépense,

(3) Section 12 of the Act is amended by adding the following after subsection (2):

(2.01) Paragraph (1)(g) does not defer the inclusion in income of any amount that would, if this section were read without reference to that paragraph, be included in computing the taxpayer's income in accordance with section 9.

(4) Subsection (1) applies after October 7, 2003.

52. (1) Subsection 13(1) of the Act is replaced by the following:

13. (1) If, at the end of a taxation year, the total of the amounts determined for E to K in the definition "undepreciated capital cost" in subsection (21) in respect of a taxpayer's depreciable property of a particular prescribed class exceeds the total of the amounts determined for A to D.1 in that definition in respect of that property, the excess shall be included in computing the taxpayer's income of the year.

(2) Subparagraph 13(4)(c)(ii) of the Act is replaced by the following:

(ii) the amount that has been used by the taxpayer to acquire

(A) if the former property is described in paragraph (a), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, or

(B) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

a replacement property of a prescribed class that has not been disposed of by the taxpayer before the time at which the taxpayer disposed of the former property, and

Dues and other expenses of performing duties

No deferral of s. 9 income under para. (1)(g)

Recaptured depreciation

(3) Section 13 of the Act is amended by adding the following after subsection (4.1):

(4.2) Subsection (4.3) applies in circumstances where

(a) a taxpayer (in this subsection and subsection (4.3) referred to as the “transferor”) has, pursuant to a written agreement with a person or partnership (in this subsection and subsection (4.3) referred to as the “transferee”), at any time disposed of or terminated a former property that is a franchise, concession or licence for a limited period that is wholly attributable to the carrying on of a business at a fixed place;

(b) the transferee acquired the former property from the transferor or, on the termination, acquired a similar property in respect of the same fixed place from another person or partnership; and

(c) the transferor and the transferee jointly elect in their returns of income for their taxation years that include that time to have subsection (4.3) apply in respect of the acquisition and the disposition or termination.

(4.3) Where this subsection applies in respect of an acquisition and a disposition or termination,

(a) if the transferee acquired a similar property referred to in paragraph (4.2)(b), the transferee is deemed to have also acquired the former property at the time that the former property was terminated and to own the former property until the transferee no longer owns the similar property;

(b) if the transferee acquired the former property referred to in paragraph (4.2)(b), the transferee is deemed to own the former property until such time as the transferee owns neither the former property nor a similar property in respect of the same fixed place to which the former property related;

(c) for the purpose of calculating the amount deductible under paragraph 20(1)(a) in respect of the former property in computing the transferee’s income, the life of the former property remaining on its acquisition by the transferee is deemed to be equal to the period that was the life of the former property remaining on its acquisition by the transferor; and

(d) any amount that would, if this Act were read without reference to this subsection, be an eligible capital amount to the transferor or an eligible capital expenditure to the transferee in respect of the disposition or termination of the former property by the transferor is deemed to be

(i) neither an eligible capital amount nor an eligible capital expenditure,

(ii) an amount required to be included in computing the capital cost to the transferee of the former property, and

(iii) an amount required to be included in computing the proceeds of disposition to the transferor in respect of a disposition of the former property.

Election —
limited period
franchise,
concession or
licence

Effect of
election

(4) Subsection (1) applies to taxation years that end after February 23, 1998.

(5) Subsection (2) applies in respect of dispositions that occur in taxation years that end on or after December 20, 2000, except that for those dispositions that occur in taxation years that end before December 20, 2001, clause 13(4)(c)(ii)(B) of the Act, as enacted by subsection (2), is to be read as follows:

(B) in any other case, before the end of the first taxation year following the initial year,

(6) Subsection (3) applies in respect of dispositions and terminations that occur after December 20, 2002.

53. (1) The portion of subsection 14(1.01) of the Act before paragraph (c) is replaced by the following:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply to a disposition made at any time in the year of an eligible capital property in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's eligible capital expenditure in respect of the acquisition of the property, that eligible capital expenditure can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(a) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be equal to the amount of that eligible capital expenditure;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to the amount of that eligible capital expenditure, for proceeds of disposition equal to the actual proceeds; and

(2) Section 14 of the Act is amended by adding the following after subsection (1.01):

(1.02) If at any time in a taxation year a taxpayer has disposed of an eligible capital property in respect of which an outlay or expenditure to acquire the property was made before 1972 (which outlay or expenditure would have been an eligible capital expenditure if it had been made or incurred as a result of a transaction that occurred after 1971), the taxpayer's actual proceeds of the disposition exceed the total of those outlays or expenditures, that total can be determined, subsection 21(1) of the *Income Tax Application Rules* applies in respect of the disposition and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil, the taxpayer may, in the taxpayer's return of income for the taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply:

Election re
capital gain

Election re
property
acquired with
pre-1972
outlays or
expenditures

(a) for the purpose of subsection (5) other than the description of A in the definition “cumulative eligible capital”, the proceeds of disposition of the property are deemed to be nil;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to nil, for proceeds of disposition equal to the amount determined, in respect of the disposition, under subsection 21(1) of the *Income Tax Application Rules*; and

(c) if the eligible capital property is at that time a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, the capital property deemed by paragraph (b) to have been disposed of by the taxpayer is deemed to have been at that time a qualified farm property of the taxpayer.

Non-applica-
tion of ss.
(1.01) and
(1.02)

(1.03) Subsections (1.01) and (1.02) do not apply to a disposition by a taxpayer of a property

(a) that is goodwill; or

(b) that was acquired by the taxpayer

(i) in circumstances where an election was made under subsection 85(1) or (2) and the amount agreed on in that election in respect of the property was less than the fair market value of the property at the time it was so acquired, and

(ii) from a person or partnership with whom the taxpayer did not deal at arm’s length and for whom the eligible capital expenditure in respect of the acquisition of the property cannot be determined.

(3) Paragraph 14(3)(a) of the Act is replaced by the following:

(a) the amount determined for E in the definition “cumulative eligible capital” in subsection (5) in respect of the disposition of the property by the transferor or, if the property is the subject of an election under subsection (1.01) or (1.02) by the transferor, 3/4 of the actual proceeds referred to in that subsection,

(4) The description of A in the definition “cumulative eligible capital” in subsection 14(5) of the Act is replaced by the following:

A is the amount, if any, by which 3/4 of the total of all eligible capital expenditures in respect of the business made or incurred by the taxpayer after the taxpayer’s adjustment time and before that time exceeds the total of all amounts each of which is determined by the formula

$$1/2 \times (A.1 - A.2) \times (A.3/A.4)$$

where

A.1 is the amount required, because of paragraph (1)(b) or 38(a), to be included in the income of a person or partnership (in this definition referred to as the “transferor”) not dealing at arm’s length with the taxpayer in respect of the disposition after De-

cember 20, 2002 of a property that was an eligible capital property acquired by the taxpayer directly or indirectly, in any manner whatever, from the transferor and not disposed of by the taxpayer before that time,

A.2 is the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 by the transferor in respect of that disposition,

A.3 is the transferor's proceeds from that disposition, and

A.4 is the transferor's total proceeds of disposition of eligible capital property in the taxation year of the transferor in which the property described in A.1 was disposed of,

(5) The description of R in the definition “cumulative eligible capital” in subsection 14(5) of the Act is replaced by the following:

R is the total of all amounts each of which is an amount included, in computing the taxpayer's income from the business for a taxation year that ended before that time and after the taxpayer's adjustment time

(a) in the case of a taxation year that ends after February 27, 2000, under paragraph (1)(a), or

(b) in the case of a taxation year that ended before February 28, 2000,

(i) under subparagraph (1)(a)(iv), as that subparagraph applied in respect of that taxation year, or

(ii) under paragraph (1)(b), as that paragraph applied in respect of that taxation year, to the extent that the amount so included is in respect of an amount included in the amount determined for P;

(6) Section 14 of the Act is amended by adding the following after subsection (5):

(5.1) The description of E in the definition “cumulative eligible capital” in subsection (5) does not apply to an amount that is received or receivable by a taxpayer in a taxation year if that amount is required to be included in the taxpayer's income because of subsection 56.4(2).

(7) The portion of subsection 14(6) of the Act before paragraph (a) is replaced by the following:

(6) If in a taxation year (in this subsection referred to as the “initial year”) a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's “former property”) and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, the amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition “cumulative eligible capital” in subsection (5) (if the description of E in that definition were read without reference to “3/4 of”) in respect of a business, that has been used by the taxpayer to acquire the replacement property before the later of the end of the first taxation year after the initial year and 12 months after the end of the initial year

Restrictive
covenant
amount

Exchange of
property

(8) Subsection (1) applies to dispositions of eligible capital property that occur in taxation years that end after February 27, 2000, except that, in its application to those dispositions of eligible capital property that occur before December 21, 2002, the portion of subsection 14(1.01) of the Act before paragraph (c), as enacted by subsection (1), is to be read as follows:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, elect that the following rules apply to a disposition made at any time in the taxation year of an eligible capital property (other than goodwill) in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's cost of the property, that cost can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(a) for the purposes of subsection (5), the proceeds of disposition of the property are deemed to be equal to that cost;

(b) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to that cost, for proceeds of disposition equal to the actual proceeds; and

(9) Subsection 14(1.02) of the Act, as enacted by subsection (2), applies to dispositions of eligible capital property that occur after December 20, 2002.

(10) Subsection 14(1.03) of the Act, as enacted by subsection (2), applies to dispositions of eligible capital property that occur after December 20, 2002, except that, in its application to those dispositions that occur on or before February 27, 2004, it is to be read without reference to its paragraph (b).

(11) Subsections (3) to (5) apply to taxation years that end after February 27, 2000, except that the expression "disposition after December 20, 2002 of a property that was an eligible capital property" in the description of A.1 in the description of A in the definition "cumulative eligible capital" in subsection 14(5) of the Act, as enacted by subsection (4), is to be read as the expression "disposition after 2003 of a property that was an eligible capital property" if

(a) the taxpayer referred to in that description of A.1 acquired the property referred to in that description from the transferor referred to in that description;

(b) the property was so acquired under an agreement in writing made before December 21, 2002, between the transferor, or a particular person that controlled the transferor, and another person who dealt at an arm's length with the transferor and the particular person; and

(c) no clause in the agreement or any other arrangement allows an obligation of any party to the agreement to be changed, reduced or waived in the event of a change to, or an adverse assessment under, the Act.

(12) Subsection (6) applies after October 7, 2003.

(13) Subsection (7) applies in respect of dispositions that occur in taxation years that end on or after December 20, 2001.

54. (1) Subsection 15(1.21) of the French version of the Act is replaced by the following:

Montant remis

(1.21) Pour l'application du paragraphe (1.2), le « montant remis » à un moment donné sur une dette émise par un débiteur s'entend au sens qui serait donné à cette expression par le paragraphe 80(1) si, à la fois :

- a) la dette était une dette commerciale, au sens du paragraphe 80(1), émise par le débiteur;
- b) il n'était pas tenu compte d'un montant inclus dans le calcul du revenu (autrement que par l'effet de l'alinéa 6(1)a)) en raison du règlement ou de l'extinction de la dette;
- c) il n'était pas tenu compte des alinéas f) et h) de l'élément B de la formule figurant à la définition de « montant remis » au paragraphe 80(1);
- d) il n'était pas tenu compte des alinéas 80(2)b) et q).

(2) Subsection 15(2) of the French version of the Act is replaced by the following:

Dette d'un actionnaire

(2) La personne ou la société de personnes — actionnaire d'une société donnée, personne ou société de personnes rattachée à un tel actionnaire ou associé d'une société de personnes, ou bénéficiaire d'une fiducie, qui est un tel actionnaire — qui, au cours d'une année d'imposition, obtient un prêt ou devient la débitrice de la société donnée, d'une autre société liée à celle-ci ou d'une société de personnes dont la société donnée ou une société liée à celle-ci est un associé, est tenue d'inclure le montant du prêt ou de la dette dans le calcul de son revenu pour l'année. Le présent paragraphe ne s'applique pas aux sociétés résidant au Canada ni aux sociétés de personnes dont chacun des associés est une société résidant au Canada.

(3) Subsection (1) applies to taxation years that end after February 21, 1994.

(4) Subsection (2) applies to loans made and indebtedness arising in the 1990 and subsequent taxation years.

55. (1) Subsection 18(1) of the Act is amended by striking out the word “and” at the end of paragraph (u), by adding the word “and” at the end of paragraph (v) and by adding the following after paragraph (v):

Underlying payments on qualified securities

(w) except as expressly permitted, an amount that is deemed by subsection 260(5.1) to have been received by another person as an amount described in any of paragraphs 260(5.1)(a) to (c).

(2) Paragraph 18(14)(c) of the Act is replaced by the following:

(c) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(3)(a) or (c) or subsection 138(11.3) or 149(10);

(3) Subsection (1) applies after 2001.

(4) Subsection (2) applies to dispositions that occur after 1998.

56. (1) Subsection 18.1(15) of the Act is replaced by the following:

Non-applica-
tion — risks
ceded between
insurers

(15) Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) the expenditure is in respect of commissions, or other expenses, related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer; and

(b) the taxpayer and the person to whom the expenditure is made, or is to be made, are both insurers who are subject to the supervision of

(i) the Superintendent of Financial Institutions, if the taxpayer or that person, as the case may be, is an insurer who is required by law to report to the Superintendent of Financial Institutions, or

(ii) the Superintendent of Insurance, or other similar officer or authority, of the province under whose laws the insurer is incorporated, in any other case.

Non-applica-
tion — no
rights, tax
benefits or
shelters

(16) Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer;

(b) no portion of the matchable expenditure can reasonably be considered to relate to a tax shelter or a tax shelter investment (within the meaning assigned by subsection 143.2(1)); and

(c) none of the main purposes for making the matchable expenditure can reasonably be considered to have been to obtain a tax benefit for the taxpayer, a person or partnership with whom the taxpayer does not deal at arm's length, or a person or partnership that holds, directly or indirectly, an interest in the taxpayer.

Revenue
exception

(17) Paragraph (4)(a) does not apply in determining the amount for a taxation year that may be deducted in respect of a taxpayer's matchable expenditure in respect of a right to receive production if

(a) before the end of the taxation year in which the matchable expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of any of those amounts that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production that relates to the matchable expenditure exceeds 80% of the matchable expenditure; and

(b) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer.

(2) Subject to subsection (3), subsection (1) applies in respect of expenditures made by a taxpayer on or after September 18, 2001 in respect of a right to receive production, except if

(a) the expenditure was

(i) required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) made under, or described in, the terms of a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

(iii) made under, or described in, the terms of an offering memorandum distributed as part of an offering of securities if

(A) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before September 18, 2001,

(C) solicitations in respect of a sale of the securities contemplated in the offering were made before September 18, 2001, and

(D) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum;

(b) the expenditure was made before 2002;

(c) the expenditure was made in consideration for services that were rendered in Canada before 2002 in respect of an activity, or a business, all or substantially all of which was carried on in Canada;

(d) there is no agreement, or other arrangement, under which the obligation of any taxpayer in respect of the expenditure can, on or after September 18, 2001, be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act;

(e) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001; and

(f) if the expenditure was made under, or described in, the terms of a document that is a prospectus, a preliminary prospectus, a registration statement or an offering memorandum (and regardless of whether the expenditure was also made under a written agreement)

(i) all of the funds raised pursuant to the document that may reasonably be used to make a matchable expenditure were received by the taxpayer before 2002,

(ii) all or substantially all of the securities distributed pursuant to the document for the purpose of raising the funds described in subparagraph (i) were acquired before 2002 by a person who is not

(A) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

(B) a vendor of the right to receive production,

(C) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or

(D) a person who does not deal at arm's length with a person to whom clause (A) or (B) applies, and

(iii) all or substantially all of the funds raised pursuant to the document before 2002 were used to make expenditures that were required to be made pursuant to agreements in writing made before September 18, 2001.

(3) Subsection (1) does not apply to an expenditure made by a taxpayer in respect of a right to receive production in respect of a particular film or video production if

(a) expenditures in respect of the particular film or video production

(i) were made before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsection 143.2(10) of the Act, except if a repaid amount for the purposes of that subsection is paid after 2002), or

(ii) were required to be made by the taxpayer under a written agreement made before September 18, 2001 by the taxpayer;

(b) principal photography of the particular film or video production

(i) began before 2002,

(ii) was primarily completed before April 2002, and

(iii) was conducted primarily in Canada;

(c) the expenditure

(i) was made before April 2002 in the course of the taxpayer's business of providing film production services in respect of the particular film or video production (as determined for the purpose of this subparagraph without reference to subsection 143.2(10) of the Act, except to the extent that a repaid amount for the purposes of that subsection is paid after 2002)

(ii) was made under, or described in, the terms of

(A) a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

- (B) an offering memorandum distributed as part of an offering of securities if
 - (I) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,
 - (II) the memorandum was distributed before September 18, 2001,
 - (III) solicitations in respect of a sale of the securities contemplated in the offering have been made before September 18, 2001, and
 - (IV) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum, and
- (iii) was not an amount in respect of advertising, marketing, promotion or market research;
- (d) except where the particular film or video production is a designated production of the taxpayer, at least 75% of the total of all expenditures, each of which is an expenditure made by the taxpayer in the course of the business referred to in subparagraph (c)(i), is an expenditure described for the purpose of that subparagraph made in consideration for the supply of goods or services that are supplied or rendered in Canada before April 2002 by persons that are subject to tax on the expenditure under Part I or XIII of the Act;
- (e) there is no agreement, or other arrangement, under which the obligation of any taxpayer to acquire a security distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum can, after September 18, 2001, be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act;
- (f) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001;
- (g) all of the funds raised pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum that may reasonably be used to make a matchable expenditure before April 2002 in respect of the particular film or video production are received by the taxpayer before 2003;
- (h) all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in paragraph (g) were acquired before 2002;
- (i) all or substantially all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in paragraph (g) were acquired by a person who is not
 - (i) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

- (ii) a vendor of the right to receive production,
- (iii) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or
- (iv) a person who does not deal at arm's length with a person referred to in subparagraph (i) or (ii); and

(j) except where the particular film or video production is a designated production of the taxpayer, all or substantially all of the matchable expenditures made by the taxpayer that are wholly attributable to the principal photography of the particular film or video production are wholly attributable to principal photography conducted in Canada.

(4) For the purpose of paragraphs (3)(d) and (j), a designated production of a taxpayer is

(a) a film or video production in respect of which

(i) all of the expenditures made by the taxpayer in respect of the particular film or video production were required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) if the taxpayer is a partnership,

(A) the taxpayer's expenditures in respect of the particular film or video production were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the taxpayer, pursuant to subscriptions in writing for the issue of units in the taxpayer,

(B) all or substantially all of those written subscriptions were received by the taxpayer on or before September 18, 2001,

(C) at least one member of the taxpayer referred to in subparagraph (i) is a partnership (in this subsection referred to as a "master partnership"),

(D) the subscriptions in writing of all master partnerships for units in the taxpayer were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the master partnerships, pursuant to subscriptions in writing for the issue of units in the master partnerships, and

(E) all or substantially all of the subscriptions in writing referred to in clause (D) were received by the master partnership on or before September 18, 2001,

(iii) if a member of a particular master partnership is a partnership (in this subsection referred to as an "original master partnership"),

(A) the subscriptions in writing of all original master partnerships for units in the particular master partnership were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the original master partnerships, pursuant to subscriptions in writing for the issue of units in the original master partnerships, and

(B) all or substantially all of those written subscriptions were received by the original master partnership on or before September 18, 2001, and

(iv) no member of an original master partnership is a partnership, an interest in which is a tax shelter; or

(b) a film or video production in respect of which

(i) principal photography was all or substantially all complete before September 18, 2001, and

(ii) all or substantially all of the taxpayer's expenditures were made on or before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsection 143.2(10) of the Act, except if a repaid amount for the purposes of that subsection is paid after 2002).

57. (1) Subsection 20(8) of the Act is amended by striking out the word “or” at the end of paragraph (a) and by adding the following after paragraph (b):

(c) the purchaser of the property sold was a corporation that, immediately after the sale,

(i) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(ii) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons that controlled the taxpayer, directly or indirectly, in any manner whatever, or

(iii) controlled the taxpayer, directly or indirectly, in any manner whatever; or

(d) the purchaser of the property sold was a partnership in which the taxpayer was, immediately after the sale, a majority interest partner.

(2) Subsection 20(12) of the Act is replaced by the following:

(12) In computing the income of a taxpayer who is resident in Canada at any time in a taxation year from a business or property for the year, there may be deducted any amount that the taxpayer claims that does not exceed the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (c) and (e) of the definition “non-business income tax” in that subsection) in respect of that income, other than any of those taxes paid that can, in whole or in part, reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(3) Paragraph 20(16)(a) of the Act is replaced by the following:

(a) the total of all amounts used to determine A to D.1 in the definition “undepreciated capital cost” in subsection 13(21) in respect of a taxpayer's depreciable property of a particular class exceeds the total of all amounts used to determine E to K in that definition in respect of that property, and

(4) Subsection 20(16.1) of the Act is replaced by the following:

Non-application of s. (16)

(16.1) Subsection (16) does not apply

(a) in respect of a passenger vehicle of a taxpayer that has a cost to the taxpayer in excess of \$20,000 or any other amount that is prescribed; and

(b) in respect of a taxation year in respect of a property that was a former property deemed by paragraph 13(4.3)(a) or (b) to be owned by the taxpayer, if

(i) within 24 months after the taxpayer last owned the former property, the taxpayer or a person not dealing at arm's length with the taxpayer acquires a similar property in respect of the same fixed place to which the former property applied, and

(ii) at the end of the taxation year, the taxpayer or the person owns the similar property or another similar property in respect of the same fixed place to which the former property applied.

(5) Subsection (1) applies in respect of property sold by a taxpayer after December 20, 2002. However, if a property so sold pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004

(a) subsection 20(8) of the Act, as it read immediately before the enactment of subsection (1), applies in respect of the property; and

(b) for the purpose of applying paragraph 20(1)(n) of the Act to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of an amount not due in respect of the sale may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receives before the end of the taxation year were received by the taxpayer.

(6) Subsection (2) applies after December 20, 2002 in respect of taxes paid at any time.

(7) Subsection (3) applies to taxation years that end after February 23, 1998.

(8) Subsection (4) applies in respect of taxation years that end after December 20, 2002.

58. (1) Subclause 37(8)(a)(ii)(B)(V) of the Act is replaced by the following:

(V) the cost of materials consumed or transformed in the prosecution of scientific research and experimental development in Canada, or

(2) Subsection (1) applies to costs incurred after February 23, 1998.

59. (1) The Act is amended by adding the following after section 38:

38.1 If a taxpayer is entitled to an amount of an advantage in respect of a gift of property described in paragraph 38(a.1) or (a.2),

Allocation of gain re certain gifts

(a) those paragraphs apply only to that proportion of the taxpayer's capital gain in respect of the gift that the eligible amount of the gift is of the taxpayer's proceeds of disposition in respect of the gift; and

(b) paragraph 38(a) applies to the extent that the taxpayer's capital gain in respect of the gift exceeds the amount of the capital gain to which paragraph 38(a.1) or (a.2) applies.

(2) Subsection (1) applies to gifts made after December 20, 2002.

60. (1) Paragraph 40(1.01)(c) of the Act is replaced by the following:

(c) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, not exceeding the eligible amount of the gift, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

(2) Paragraph 40(2)(a) of the Act is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) the purchaser of the property sold is a partnership in which the taxpayer was, immediately after the sale, a majority interest partner;

(3) Paragraph 40(3.14)(a) of the English version of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

(4) Paragraph 40(3.5)(b) of the Act is replaced by the following:

(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction is deemed to be a property that is identical to the other share if

(i) section 51, 86, or 87 applies to the transaction, or

(ii) the following conditions are met, namely,

(A) section 85.1 applies to the transaction,

(B) subsection (3.4) applied to a prior disposition of the other share, and

(C) none of the times described in any of subparagraphs (3.4)(b)(i) to (v) has occurred in respect of the prior disposition;

(5) Subsection (1) applies to gifts made after December 20, 2002.

(6) Subsection (2) applies to sales that occur after December 20, 2002.

(7) Subsection (3) applies after June 20, 2001.

(8) Subsection (4) applies to dispositions of property that occur after April 26, 1995, except that it does not apply to any of those dispositions by a person or partnership that occurred before 1996 and that is described in subsection 247(1) of the *Income Tax Amendments Act, 1997* unless the person or partnership, as the case may be, made a valid election under subsection 247(2) of that Act.

61. (1) The portion of subsection 43(2) of the Act before the formula in paragraph (a) is replaced by the following:

Ecological
gifts

(2) For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the covenant, easement or real servitude, as the case may be, is deemed to be equal to the amount determined by the formula

(2) Subsection (1) applies to gifts made after December 20, 2002.

62. (1) The portion of subsection 43.1(1) of the Act before paragraph (a) is replaced by the following:

Life estates in
real property

43.1 (1) Notwithstanding any other provision of this Act, if at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition “total charitable gifts”, “total Crown gifts” or “total ecological gifts” in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate pur autre vie (in this section called the “life estate”) in the property, the taxpayer is deemed

(2) Subsection (1) applies to dispositions that occur after February 27, 1995.

63. (1) Paragraphs 44(1)(c) and (d) of the Act are replaced by the following:

(c) if the former property is described in paragraph (a), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, and

(d) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

(2) Subsection 44(7) of the Act is amended by striking out the word “or” at the end of paragraph (a), by adding the word “or” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) the former property of the taxpayer was disposed of to a partnership in which the taxpayer was, immediately after the disposition, a majority interest partner.

(3) Paragraph 44(1)(c) of the Act, as enacted by subsection (1), applies in respect of dispositions that occur in taxation years that end on or after December 20, 2000.

(4) Paragraph 44(1)(d) of the Act, as enacted by subsection (1), applies in respect of dispositions that occur in taxation years that end on or after December 20, 2001.

(5) Subsection (2) applies to dispositions of property by a taxpayer that occur after December 20, 2002. However, if a property so disposed of pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004

(a) subsection 44(7) of the Act, as it read immediately before the enactment of subsection (2), applies in respect of the disposition of property; and

(b) for the purpose of applying subparagraph 44(1)(e)(iii) of the Act to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of the proceeds of disposition may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receives before the end of the taxation year were received by the taxpayer.

64. (1) The portion of subsection 44.1(6) of the Act before paragraph (b) is replaced by the following:

Special rule —
re eligible
small business
corporation
share
exchanges

(6) For the purpose of this section, where an individual receives shares of the capital stock of a particular corporation that are eligible small business corporation shares of the individual (in this subsection referred to as the “new shares”) as the sole consideration for the disposition by the individual of shares issued by the particular corporation or by another corporation that were eligible small business corporation shares of the individual (in this subsection referred to as the “exchanged shares”), the new shares are deemed to have been owned by the individual throughout the period that the exchanged shares were owned by the individual if

(a) section 51, paragraph 85(1)(h), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares; and

(2) The portion of subsection 44.1(7) of the Act before paragraph (b) is replaced by the following:

Special rule —
re active
business
corporation
share
exchanges

(7) For the purpose of this section, where an individual receives common shares of the capital stock of a particular corporation (in this subsection referred to as the “new shares”) as the sole consideration for the disposition by the individual of common shares of the particular corporation or of another corporation (in this subsection referred to as the “exchanged shares”), the new shares are deemed to be eligible small business corporation shares of the individual and shares of the capital stock of an active business corporation that were owned by the individual throughout the period that the exchanged shares were owned by the individual, if

(a) section 51, paragraph 85(1)(h), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares;

(3) Paragraph 44.1(12)(b) of the Act is replaced by the following:

- (b) the new shares (or shares for which the new shares are substituted property) were
- (i) issued by the corporation that issued the old shares,
 - (ii) issued by a corporation that, at or immediately after the time of issue of the new shares, was a corporation that was not dealing at arm's length with
 - (A) the corporation that issued the old shares, or
 - (B) the individual, or
 - (iii) issued, by a corporation that acquired the old shares (or by another corporation related to that corporation), as part of the transaction or event or series of transactions or events that included that acquisition of the old shares; and

(4) Section 44.1 of the Act is amended by adding the following after subsection (12):

(13) For the purpose of this section, an individual is deemed to dispose of shares that are identical properties in the order in which the individual acquired them.

(5) Subsections (1) and (2) apply to dispositions that occur after February 27, 2000.

(6) Subsection (3) applies in respect of dispositions that occur after February 27, 2004.

(7) Subsection (4) applies in respect of dispositions that occur after December 20, 2002. However, if an individual so elects in writing and files the election with the Minister of National Revenue on or before the individual's filing-due date for the individual's taxation year in which this Act is assented to, subsection (4) applies, in respect of the individual, to dispositions that occur after February 27, 2000.

65. (1) Paragraph 53(1)(e) of the Act is amended by adding the following after subparagraph (iv):

(iv.1) each amount that is in respect of a specified amount described in subsection 80.2(1) and that is paid by the taxpayer to the partnership, to the extent that the amount paid is not deductible in computing the income of the taxpayer,

(2) Subparagraph 53(2)(c)(iii) of the Act is replaced by the following:

(iii) any amount deemed by subsection 110.1(4) or 118.1(8) to have been the eligible amount of a gift made, or by subsection 127(4.2) to have been an amount contributed, by the taxpayer by reason of the taxpayer's membership in the partnership at the end of a fiscal period of the partnership ending before that time,

(3) The portion of subsection 53(4) of the Act before paragraph (a) is replaced by the following:

(4) If at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or

Order of
disposition of
shares

Recomputa-
tion of
adjusted cost
base on
transfers and
deemed
dispositions

(5)(f), subsection 104(4), paragraph 107(2)(a) or (2.1)(a), 107.4(3)(a) or 111(4)(e) or section 128.1,

(4) Subsection (1) applies to payments made in taxation years that end after 2002.

(5) Subsection (2) applies in respect of gifts and contributions made after December 20, 2002.

(6) Subsection (3) applies after February 27, 2004.

66. (1) Paragraph (c) of the definition “superficial loss” in section 54 of the Act is replaced by the following:

(c) a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(3)(a) or (c), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

(2) Subsection (1) applies to dispositions that occur after 1998.

67. (1) The portion of subsection 54.1(1) of the English version of the Act before paragraph (a) is replaced by the following:

54.1 (1) A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer’s property as a consequence of the relocation of the place of employment of the taxpayer or the taxpayer’s spouse or common-law partner while the taxpayer or the taxpayer’s spouse or common-law partner, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the taxpayer’s spouse or common-law partner is related is deemed not to be a previous taxation year referred to in paragraph (d) of the definition “principal residence” in section 54 if

(2) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

68. (1) The definition “specified class” in subsection 55(1) of the Act is amended by striking out the word “and” at the end of paragraph (b) and by replacing paragraph (c) with the following:

(c) no holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm’s length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares, and

(d) the shares are non-voting in respect of the election of the board of directors except in the event of a failure or default under the terms or conditions of the shares;

(2) Subsection 55(1) of the Act is amended by adding the following in alphabetical order:

“qualified person”
« *personne admissible* »

“qualified person”, in relation to a distribution, means a person or partnership with whom the distributing corporation deals at arm’s length at all times during the course of the series of transactions or events that includes the distribution if

(a) at any time before the distribution,

(i) all of the shares of each class of the capital stock of the distributing corporation that includes shares that cause that person or partnership to be a specified shareholder of the distributing corporation (in this definition all of those shares in all of those classes are referred to as the “exchanged shares”) are, in the circumstances described in paragraph (a) of the definition “permitted exchange”, exchanged for consideration that consists solely of shares of a specified class of the capital stock of the distributing corporation (in this definition referred to as the “new shares”), or

(ii) the terms or conditions of all of the exchanged shares are amended (which shares are in this definition referred to after the amendment as the “amended shares”) and the amended shares are shares of a specified class of the capital stock of the distributing corporation,

(b) immediately before the exchange or amendment, the exchanged shares are listed on a prescribed stock exchange,

(c) immediately after the exchange or amendment, the new shares or the amended shares, as the case may be, are listed on a prescribed stock exchange,

(d) the exchanged shares would be shares of a specified class if they were not convertible into, or exchangeable for, other shares,

(e) the new shares or the amended shares, as the case may be, and the exchanged shares are non-voting in respect of the election of the board of directors of the distributing corporation except in the event of a failure or default under the terms or conditions of the shares, and

(f) no holder of the new shares or the amended shares, as the case may be, is entitled to receive on the redemption, cancellation or acquisition of the new shares or the amended shares, as the case may be, by the distributing corporation or by any person with whom the distributing corporation does not deal at arm’s length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the exchanged shares were issued and the amount of any unpaid dividends on the new shares or on the amended shares, as the case may be;

(3) Clause 55(3)(a)(iii)(B) of the Act is replaced by the following:

(B) property (other than shares of the capital stock of the dividend recipient) more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer,

(4) Paragraph 55(3.01)(d) of the Act is replaced by the following:

(d) proceeds of disposition are to be determined without reference to

(i) the expression “paragraph 55(2)(a) or” in paragraph (j) of the definition “proceeds of disposition” in section 54, and

(ii) section 93; and

(5) Clause 55(3.1)(b)(i)(B) of the Act is replaced by the following:

(B) the vendor (other than a qualified person in relation to the distribution) was, at any time during the course of the series, a specified shareholder of the distributing corporation or of the transferee corporation, and

(6) Paragraph 55(3.2)(h) of the Act is replaced by the following:

(h) in relation to a distribution each corporation (other than a qualified person in relation to the distribution) that is a shareholder and a specified shareholder of the distributing corporation at any time during the course of a series of transactions or events, a part of which includes the distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

(7) Section 55 of the Act is amended by adding the following after subsection (3.3):

(3.4) In determining whether a person is a specified shareholder of a corporation for the purposes of the definition “qualified person” in subsection (1), subparagraph (3.1)(b)(i) and paragraph (3.2)(h) as it applies for the purpose of subparagraph (3.1)(b)(iii), the expression “not less than 10% of the issued shares of any class of the capital stock of the corporation” in the definition “specified shareholder” in subsection 248(1) is to be read as the expression “not less than 10% of the issued shares of any class of the capital stock of the corporation, other than shares of a specified class (within the meaning of subsection 55(1))”.

(3.5) For the purposes of paragraphs (3.1)(c) and (d), a corporation formed by an amalgamation of two or more corporations (each of which is referred to in this subsection as a “predecessor corporation”) that were related to each other immediately before the amalgamation, is deemed to be the same corporation as, and a continuation of, each of the predecessor corporations.

(8) Section 55 of the Act is amended by adding the following after subsection (5):

(6) A share (in this subsection referred to as the “reorganization share”) is deemed, for the purposes of subsection 116(6) and the definition “taxable Canadian property” in subsection 248(1), to be listed on a prescribed stock exchange if

(a) a dividend, to which subsection (2) does not apply because of paragraph (3)(b), is received in the course of a reorganization;

(b) in contemplation of the reorganization

(i) the reorganization share is issued to a taxpayer by a public corporation in exchange for another share of that corporation (in this subsection referred to as the “old share”) owned by the taxpayer, and

Specified
shareholder
exclusion

Amalgamation
of related
corporations

Unlisted
shares deemed
listed

(ii) the reorganization share is exchanged by the taxpayer for a share of another public corporation (in this subsection referred to as the “new share”) in an exchange that would be a permitted exchange if the definition “permitted exchange” were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition;

(c) immediately before the exchange, the old share

(i) is listed on a prescribed stock exchange, and

(ii) is not taxable Canadian property of the taxpayer; and

(d) the new share is listed on a prescribed stock exchange.

(9) Subsection (1) applies in respect of shares issued after December 20, 2002.

(10) Subsections (2), (5) and (6) and subsection 55(3.4) of the Act, as enacted by subsection (7), apply in respect of dividends received after 1999.

(11) Subsections (3) and (4) apply to dividends received after February 21, 1994.

(12) Subsection 55(3.5) of the Act, as enacted by subsection (7), applies in respect of dividends received after April 26, 1995.

(13) Subsection (8) applies to shares that are issued after April 26, 1995.

69. (1) Subsection 56(1) of the Act is amended by adding the following after paragraph (l.1):

(m) any amount received by the taxpayer, or by a person who does not deal at arm’s length with the taxpayer, in the year on account of a debt in respect of which a deduction was made under paragraph 60(f) in computing the taxpayer’s income for a preceding taxation year;

(2) Paragraph 56(1)(r) of the Act is amended by striking out the word “or” at the end of subparagraph (ii), by adding the word “or” at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) financial assistance provided under a program established by a government, or government agency, in Canada that provides income replacement benefits similar to income replacement benefits provided under a program established under the *Employment Insurance Act*;

(3) Section 56 of the Act is amended by adding the following after subsection (11):

(12) If an amount in respect of a foreign retirement arrangement is, as a result of a transaction, an event or a circumstance, considered to be distributed to an individual under the income tax laws of the country in which the arrangement is established, the amount is, for the purpose of paragraph (1)(a), deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the transaction, event or circumstance.

(4) Subsection (1) applies after October 7, 2003.

Bad debt
recovered

Foreign
retirement
arrangement

(5) Subsection (2) applies to the 2003 and subsequent taxation years.

(6) Subsection (3) applies to the 1998 and subsequent taxation years except that, for taxation years that end before 2002, subsection 56(12) of the Act, as enacted by subsection (3), is to be read as follows:

(12) For the purpose of paragraph (1)(a),

(a) if an amount in respect of a foreign retirement arrangement is considered, under section 408A(d)(3)(C) of the *Internal Revenue Code of 1986* of the United States (in this subsection referred to as the “Code”), to be distributed to an individual as a result of a conversion of the arrangement after 1998 and before 2002, the amount is deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the conversion; and

(b) if an individual received an amount as a payment out of or under a foreign retirement arrangement in 1998, or an amount is considered under section 408A(d)(3)(C) of the Code to be distributed to the individual as a result of a conversion of the arrangement in 1998, the individual was resident in Canada at the time of the receipt or conversion and the amount is an amount to which section 408A(d)(3)(A)(iii) of the Code applies,

(i) the amount is deemed not to have been received by the individual, and

(ii) an amount equal to the amount that is included under section 408A(d)(3)(A)(iii) or 408A(d)(3)(E) of the Code in the individual’s gross income for a particular taxable year is deemed to be an amount received by the individual, in the taxation year that includes the day on which the particular taxable year begins, as a payment out of the arrangement, where the expressions “gross income” and “taxable year” in this subparagraph have the meanings assigned to those expressions by the Code.

70. (1) The Act is amended by adding the following after section 56.3:

Restrictive Covenants

Definitions

56.4 (1) The following definitions apply in this section.

“eligible corporation”
« *société admissible* »

“eligible corporation”, of a taxpayer at any time, means a taxable Canadian corporation of which, at the time, the taxpayer holds not less than 90% of the issued and outstanding share capital having full voting rights under all circumstances and having a fair market value of not less than 90% of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation.

“eligible interest”
« *participation admissible* »

“eligible interest”, of a taxpayer, means capital property of the taxpayer that is

(a) a partnership interest in a partnership that carries on a business;

(b) a share of the capital stock of a corporation that carries on a business; or

	(c) a share of the capital stock of a corporation 90% or more of the fair market value of which is attributable to eligible interests in one other corporation.
“goodwill amount” « montant pour achalandage »	“goodwill amount”, of a taxpayer, is an amount received or receivable by the taxpayer as consideration for the disposition by the taxpayer of goodwill, and that is required by the description of E in the definition “cumulative eligible capital” in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the taxpayer through a permanent establishment located in Canada.
“restrictive covenant” « clause restrictive »	“restrictive covenant”, of a taxpayer, means an agreement entered into, an undertaking made, or a waiver of an advantage or right by the taxpayer (other than an agreement or undertaking for the disposition of the taxpayer’s property or for the satisfaction of an obligation described in section 49.1 that is not a disposition), whether legally enforceable or not, that affects, or is intended to affect, in any way whatever, the acquisition or provision of property or services by the taxpayer or by another taxpayer that does not deal at arm’s length with the taxpayer.
“taxpayer” « contribuable »	“taxpayer” includes a partnership.
Income — restrictive covenants	(2) There is to be included in computing a taxpayer’s income for a taxation year the total of all amounts each of which is an amount in respect of a restrictive covenant of the taxpayer that is received or receivable in the taxation year by the taxpayer or by a person not dealing at arm’s length with the taxpayer (other than an amount that has been included in computing the taxpayer’s income because of this subsection for a preceding taxation year or in the taxpayer’s eligible corporation’s income because of this subsection for the taxation year or a preceding taxation year).
Non-application of subsection (2)	(3) Subsection (2) does not apply to an amount received or receivable by a taxpayer in a taxation year in respect of a restrictive covenant granted by the taxpayer to a person with whom the taxpayer deals at arm’s length (referred to in this subsection and subsection (4) as the “purchaser”) if <ul style="list-style-type: none"> (a) section 5 or 6 applied to include the amount in computing the taxpayer’s income for the taxation year or would have so applied if the amount had been received in the taxation year; (b) the amount would, if this Act were read without reference to this section, be required by the description of E in the definition “cumulative eligible capital” in subsection 14(5) to be included in computing the taxpayer’s cumulative eligible capital in respect of the business to which the restrictive covenant relates, and the taxpayer and the purchaser elect in prescribed form to apply this paragraph in respect of the amount; or (c) the amount directly relates to the taxpayer’s disposition of property that is, at the time of the disposition, an eligible interest in the partnership or corporation that carries on the business to which the restrictive covenant relates, or that is at that time an eligible interest by virtue of paragraph (c) of the definition “eligible interest” where the other corporation referred to in that paragraph carries on the business to which the restrictive covenant relates, and

- (i) the disposition is to the purchaser (or to a person related to the purchaser),
- (ii) the amount is consideration for an undertaking by the taxpayer not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser),
- (iii) the amount does not exceed the amount determined by the formula

$$A - B$$

where

A is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if all restrictive covenants that may reasonably be considered to relate to a disposition of an interest in the business by any taxpayer were provided for no consideration, and

B is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if no covenant were granted by any taxpayer that held an interest in the business,

- (iv) subsection 84(3) does not apply to the disposition,
- (v) the amount is added to the taxpayer's proceeds of disposition, as defined by section 54, for the purpose of applying this Act to the disposition of the taxpayer's eligible interest, and
- (vi) the taxpayer and the purchaser elect in prescribed form to apply this paragraph in respect of the amount.

Treatment of purchaser

(4) An amount paid or payable by a purchaser for a restrictive covenant is

(a) if the amount is required because of section 5 or 6 to be included in computing the income of an employee of the purchaser, to be considered to be wages paid or payable by the purchaser to the employee;

(b) if an election has been made under paragraph (3)(b) in respect of the amount, to be considered to be an outlay incurred by the purchaser on account of capital for the purpose of applying the definition "eligible capital expenditure" in subsection 14(5); and

(c) if an election has been made under subparagraph (3)(c)(vi) in respect of the amount and the amount relates to the purchaser's acquisition of property that is, immediately after the acquisition, an eligible interest of the purchaser, to be included in computing the cost to the purchaser of that interest.

Non-application of s. 68

(5) If this subsection applies in respect of a restrictive covenant granted by a taxpayer, section 68 does not apply to deem consideration to be received or receivable by the taxpayer for the restrictive covenant.

Application of
s. (5) — if
employee
provides
covenant

(6) Subsection (5) applies to a restrictive covenant if

- (a) the restrictive covenant is granted by an individual to a person with whom the individual deals at arm's length (referred to in this subsection as the "purchaser");
- (b) the restrictive covenant directly relates to the acquisition from one or more other persons (in this subsection and subsection (8) referred to as the "vendors") by the purchaser of an interest in the individual's employer, in a corporation related to that employer or in a business carried on by that employer;
- (c) the individual deals at arm's length with the employer and with the vendors;
- (d) the restrictive covenant is an undertaking by the individual not to provide property or services in competition with property or services provided or to be provided by the purchaser (or by a person related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates;
- (e) no proceeds are received or receivable by the individual for granting the restrictive covenant; and
- (f) the amount that can reasonably be regarded to be consideration for the restrictive covenant is received or receivable only by the vendors.

Application of
s. (5)

(7) Subsection (5) applies to a restrictive covenant if

- (a) the restrictive covenant is granted by a taxpayer (in this subsection referred to as the "vendor") to a person with whom the vendor deals at arm's length (referred to in this subsection as the "purchaser");
- (b) the restrictive covenant is an undertaking of the vendor not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser) in the course of carrying on the business to which the restrictive covenant relates;
- (c) no proceeds are received or receivable by the vendor for granting the restrictive covenant;
- (d) the amount that can reasonably be regarded to be consideration for the restrictive covenant is
 - (i) included by the vendor in computing a goodwill amount of the vendor, or
 - (ii) received or receivable by a corporation that was an eligible corporation of the vendor when the restrictive covenant was granted and included by the eligible corporation in computing a goodwill amount of the eligible corporation in respect of the business to which the restrictive covenant relates;
- (e) the restrictive covenant may reasonably be considered to have been granted to maintain or preserve the value of

	<p>(i) goodwill acquired by the purchaser from the vendor, or</p> <p>(ii) goodwill acquired by the purchaser from the vendor's eligible corporation; and</p> <p>(f) the vendor and the purchaser or, if subparagraph (d)(ii) applies, the vendor, the eligible corporation and the purchaser, jointly elect in prescribed form to apply subsection (5) to the restrictive covenant.</p>
Clarification if s. (5) applies	<p>(8) If subsection (5) applies in respect of a restrictive covenant granted by a taxpayer, for greater certainty</p> <p>(a) the amount referred to in paragraph (6)(f) is to be added in computing the amount received or receivable by the vendors as consideration for the disposition of the interest referred to in paragraph (6)(b); and</p> <p>(b) the amount that could reasonably be regarded as consideration referred to in subparagraph (7)(d)(i) or (ii), as the case may be, is to be added in computing</p> <p>(i) the amount that is required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the vendor through a permanent establishment located in Canada, or</p> <p>(ii) the amount that is required by the description of E in the definition "cumulative eligible capital" in subsection 14(5) to be included in computing the cumulative eligible capital of a business carried on by the eligible corporation through a permanent establishment located in Canada.</p>
Filing of prescribed form	<p>(9) For the purpose of paragraphs (3)(b) and (c) and (7)(f), a joint election in prescribed form filed under any of those provisions is to include a copy of the restrictive covenant and be filed</p> <p>(a) if the person who granted the restrictive covenant is a person resident in Canada when the restrictive covenant was granted, by the person with the Minister on or before the person's filing-due date for the taxation year that includes the day on which the restrictive covenant was granted; and</p> <p>(b) in any other case, with the Minister on or before the day that is six months after the day on which the restrictive covenant is granted.</p>
Non-application of s. 42	<p>(10) Section 42 does not apply to an amount received or receivable as consideration for a restrictive covenant.</p> <p>(2) Subject to subsection (3), subsection (1) applies to</p> <p>(a) amounts received or receivable by a taxpayer after October 7, 2003 other than to amounts received by the taxpayer before 2005 under a grant of a restrictive covenant made in writing on or before October 7, 2003 between the taxpayer and a purchaser with whom the taxpayer deals at arm's length; and</p> <p>(b) amounts paid or payable by a purchaser after October 7, 2003 other than to amounts paid or payable by the purchaser before 2005 under a grant of a restrictive</p>

covenant made in writing on or before October 7, 2003 between the purchaser and a taxpayer with whom the purchaser deals at arm's length.

(3) For the purpose of applying subsection (1) to a restrictive covenant granted before ANNOUNCEMENT DATE,

(a) paragraph 56.4(3)(c) of the Act, as enacted by subsection (1), is to be read without reference to its subparagraph (iv); and

(b) an election referred to in subsection 56.4(9) of the Act, as enacted by subsection (1), is deemed to be filed on a timely basis if it is filed on or before the day that is 180 days after the day on which this Act is assented to.

71. (1) Section 60 of the Act is amended by adding the following after paragraph (e):

(f) all debts owing to a taxpayer that are established by the taxpayer to have become bad debts in the taxation year and that are in respect of an amount included because of the operation of subsection 6(3.1) or 56.4(2) in computing the taxpayer's income in a preceding taxation year;

(2) Clause 60(f)(ii)(B) of the Act is replaced by the following:

(B) under which the taxpayer is the annuitant for a term not exceeding 18 years minus the age in whole years of the taxpayer at the time the annuity was acquired

(3) Subsection (1) applies after October 7, 2003.

(4) Subsection (2) applies after 1988.

72. (1) The Act is amended by adding the following after section 60.01:

60.011 (1) For the purpose of subsection (2), a trust is at any particular time a lifetime benefit trust with respect to a taxpayer and the estate of a deceased individual if

(a) immediately before the death of the deceased individual, the taxpayer

(i) was both a spouse or common-law partner of the deceased individual and mentally infirm, or

(ii) was both a child or grandchild of the deceased individual and dependent on the deceased individual for support because of mental infirmity; and

(b) the trust is, at the particular time, a personal trust under which

(i) no person other than the taxpayer may receive or otherwise obtain the use of, during the taxpayer's lifetime, any of the income or capital of the trust, and

(ii) the trustees

(A) are empowered to pay amounts from the trust to the taxpayer, and

(B) are required – in determining whether to pay, or not to pay, an amount to the taxpayer – to consider the needs of the taxpayer including, without limiting the generality of the foregoing, the comfort, care and maintenance of the taxpayer.

Restrictive
covenant —
bad debt

Meaning of
"lifetime
benefit trust"

Meaning of
"qualifying
trust annuity"

(2) Each of the following is a qualifying trust annuity with respect to a taxpayer:

(a) an annuity that meets the following conditions, namely,

- (i) it is acquired after 2005,
- (ii) the annuitant under it is a trust that is, at the time the annuity is acquired, a lifetime benefit trust with respect to the taxpayer and the estate of a deceased individual,
- (iii) it is for the life of the taxpayer (with or without a guaranteed period), or for a fixed term equal to 90 years minus the age in whole years of the taxpayer at the time it is acquired, and
- (iv) if it is with a guaranteed period or for a fixed term, it requires that, in the event of the death of the taxpayer during the guaranteed period or fixed term, any amounts that would otherwise be payable after the death of the taxpayer be commuted into a single payment;

(b) an annuity that meets the following conditions, namely,

- (i) it is acquired after 1988,
- (ii) the annuitant under it is a trust under which the taxpayer is the sole person beneficially interested (determined without regard to any right of a person to receive an amount from the trust only on or after the death of the taxpayer) in amounts payable under the annuity,
- (iii) it is for a fixed term not exceeding 18 years minus the age in whole years of the taxpayer at the time it is acquired, and
- (iv) if it is acquired after 2005, it requires that, in the event of the death of the taxpayer during the fixed term, any amounts that would otherwise be payable after the death of the taxpayer be commuted into a single payment; and

(c) an annuity that meets the following conditions, namely,

- (i) it is acquired
 - (A) after 2000 and before 2005 at a time at which the taxpayer was mentally or physically infirm, or
 - (B) in 2005 at a time at which the taxpayer was mentally infirm,
- (ii) the annuitant under it is a trust under which the taxpayer is the sole person beneficially interested (determined without regard to any right of a person to receive an amount from the trust only on or after the death of the taxpayer) in amounts payable under the annuity, and
- (iii) it is for the life of the taxpayer (with or without a guaranteed period), or for a fixed term equal to 90 years minus the age in whole years of the taxpayer at the time it is acquired.

Application of
paragraph
60(1) to
"qualifying
trust annuity"

(3) For the purpose of paragraph 60(1),

(a) in determining if a qualifying trust annuity with respect to a taxpayer is an annuity described in subparagraph 60(1)(ii), clauses 60(1)(ii)(A) and (B) are to be read without regard to their requirement that the taxpayer be the annuitant under the annuity; and

(b) if an amount paid to acquire a qualifying trust annuity with respect to a taxpayer would, if this Act were read without reference to this subsection, not be considered to have been paid by or on behalf of the taxpayer, the amount is deemed to have been paid on behalf of the taxpayer where

(i) it is paid

(A) by the estate of a deceased individual who was, immediately before death,

(I) a spouse or common-law partner of the taxpayer, or

(II) a parent or grandparent of the taxpayer on whom the taxpayer was dependent for support, or

(B) by the trust that is the annuitant under the qualifying trust annuity, and

(ii) it would, if it had been paid by the taxpayer, be deductible under paragraph 60(1) in computing the taxpayer's income for a taxation year and the taxpayer elects, in the taxpayer's return of income under this Part for that taxation year, to have this paragraph apply to the amount.

(2) Subsection (1) applies after 1988 and, for the purpose of applying subparagraph 60.011(3)(b)(ii) of the Act, as enacted by subsection (1), to a taxation year that ends before 2005, a taxpayer is deemed to have made the election referred to in that subparagraph in respect of an amount paid to acquire a qualifying trust annuity if the taxpayer claimed, in their return of income for that taxation year, an amount as a deduction under paragraph 60(1) of the Act in respect of the amount paid to acquire the qualifying trust annuity.

73. (1) The portion of clause (i)(B) of the description of C in paragraph 63(2)(b) of the Act before subclause (I) is replaced by the following:

(B) a person certified in writing by a medical doctor to be a person who

(2) Subsection (1) applies to certifications made after December 20, 2002.

74. (1) The portion of subsection 66(12.6) of the Act before paragraph (a) is replaced by the following:

(12.6) If a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day on which the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses (other than an expense

Canadian
exploration
expenses to
flow-through
shareholder

deemed by subsection 66.1(9) to be a Canadian exploration expense of the corporation), the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purpose of subsection (12.7), to the person in respect of the share the amount, if any, by which the portion of those expenses that was incurred on or before the effective date of the renunciation (which portion is in this subsection referred to as the “specified expenses”) exceeds the total of

(2) The portion of subsection 66(12.63) of the Act before paragraph (a) is replaced by the following:

(12.63) Subject to subsections (12.69) to (12.702), if under subsection (12.62) a corporation renounces an amount to a person,

(3) The portion of subsection 66(12.66) of the French version of the Act before paragraph (b) is replaced by the following:

(12.66) Pour l'application du paragraphe (12.6) et pour l'application du paragraphe (12.601) et de l'alinéa (12.602)b), la société qui émet une action accréditive à une personne conformément à une convention est réputée avoir engagé des frais d'exploration au Canada ou des frais d'aménagement au Canada le dernier jour de l'année civile précédant une année civile donnée si les conditions suivantes sont réunies :

- a) la société engage les frais au cours de l'année donnée;
- a.1) la convention a été conclue au cours de l'année précédente;

(4) Subparagraph 66(12.66)(b)(iii) of the French version of the Act is replaced by the following:

(iii) seraient des dépenses visées à l'alinéa f) de la définition de « frais d'aménagement au Canada » au paragraphe 66.2(5) si le passage « à l'un des alinéas a) à e) » était remplacé par « aux alinéas a) ou b) »;

(5) The portion of subsection 66(12.66) of the English version of the Act after paragraph (e) is replaced by the following:

the corporation is for the purpose of subsection (12.6), or of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of that preceding year.

(6) Paragraphs (d) and (e) of the definition “Canadian resource property” in subsection 66(15) of the Act are replaced by the following:

(d) any right to a rental or royalty computed by reference to the amount or value of production from an oil or a gas well in Canada, or from a natural accumulation of petroleum or natural gas in Canada, if the payer of the rental or royalty has an interest in, or for civil law a right in, the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

Effect of
renunciation

Frais engagés
dans l'année
suivante

(e) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in Canada, if the payer of the rental or royalty has an interest in, or for civil law a right in, the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

(7) The definition “flow-through share” in subsection 66(15) of the Act is replaced by the following:

“flow-through
share”
« action
accréditive »

“flow-through share” means a share (other than a prescribed share) of the capital stock of a principal-business corporation, or a right (other than a prescribed right) to acquire a share of the capital stock of a principal-business corporation, issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances to which any of sections 51, 85, 85.1, 86 and 87 applies, agrees

(a) to incur, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and

(b) to renounce, in prescribed form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share or right;

(8) Subsections (1) and (2) apply to renunciations made after December 20, 2002.

(9) Subsection (3) applies to expenses incurred after 1996, except that

(a) subsection (3) does not apply to expenses incurred in January or February 1997 in respect of an agreement that was made in 1995; and

(b) for the purpose of applying paragraph 66(12.66)(a.1) of the French version of the Act, as enacted by subsection (3), to expenses incurred in 1998, any agreement made in 1996 is deemed to have been made in 1997.

(10) Subsection (6) applies to rights acquired after December 20, 2002.

(11) Subsection (7) applies to agreements made after December 20, 2002.

75. (1) Section 66.7 of the Act is amended by adding the following after subsection (10):

Amalgamation
— partnership
property

(10.1) For the purposes of subsections (1) to (5) and the definition “original owner” in subsection 66(15), if at any particular time there has been an amalgamation within the meaning assigned by subsection 87(1), other than an amalgamation to which subsection 87(1.2) applies, of two or more corporations (each of which is referred to in this subsection as a “predecessor corporation”) to form one corporate entity (referred to in this subsection as the “new corporation”) and immediately before the particular time a predecessor corpo-

ration was a member of a partnership that owned a Canadian resource property or a foreign resource property,

(a) the predecessor corporation is deemed

(i) to have owned, immediately before the particular time, that portion of each Canadian resource property and of each foreign resource property owned by the partnership at the particular time that is equal to the predecessor corporation's percentage share of the total of the amounts that would be paid to all members of the partnership if the partnership were wound up immediately before the particular time, and

(ii) to have disposed of those portions to the new corporation at the particular time;

(b) the new corporation is deemed to have, by way of the amalgamation, acquired those portions at the particular time; and

(c) the income of the new corporation for a taxation year that ends after the particular time that can reasonably be attributable to production from those properties is deemed to be the lesser of

(i) the new corporation's share of the part of the income of the partnership for fiscal periods of the partnership that end in the year that can reasonably be regarded as being attributable to production from those properties, and

(ii) the amount that would be determined under subparagraph (i) for the year if the new corporation's share of the income of the partnership for the fiscal periods of the partnership that end in the year were determined on the basis of the percentage share referred to in paragraph (a).

(2) Subsection (1) applies to amalgamations that occur after 1996.

76. (1) The portion of section 68 of the Act before paragraph (a) is replaced by the following:

68. If an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer, for the provision of particular services by a taxpayer or for a restrictive covenant as defined by subsection 56.4(1) granted by a taxpayer,

(2) Section 68 of the Act is amended by striking out the word "and" at the end of paragraph (a), by adding the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) the part of the amount that can reasonably be regarded as being consideration for the restrictive covenant is deemed to be an amount received or receivable by the taxpayer in respect of the restrictive covenant irrespective of the form or legal effect of the contract or agreement, and that part is deemed to be an amount paid or payable to the taxpayer by the person to whom the restrictive covenant was granted.

(3) Subsections (1) and (2) apply on and after February 27, 2004, other than to a taxpayer's grant of a restrictive covenant made in writing by the taxpayer before February 27, 2004 between the taxpayer and a person with whom the taxpayer deals at arm's length.

77. (1) Paragraph 69(1)(b) of the English version of the Act is amended by striking out the word "and" at the end of subparagraph (iii).

(2) Subsection (1) applies to dispositions that occur after December 23, 1998.

78. (1) The portion of subsection 70(3) of the French version of the Act before paragraph (a) is replaced by the following:

Droits ou biens
transférés aux
bénéficiaires

(3) Si, avant l'expiration du délai accordé pour le choix prévu au paragraphe (2), un droit ou un bien auquel ce paragraphe s'appliquerait par ailleurs a été transféré ou distribué aux bénéficiaires ou à d'autres personnes ayant un droit de bénéficiaire sur la succession ou la fiducie, les règles suivantes s'appliquent :

(2) The portion of subsection 70(6) of the French version of the Act before paragraph (a) is replaced by the following:

Transfert ou
distribution de
biens à l'époux
ou au conjoint
de fait ou à une
fiducie à leur
profit

(6) Lorsqu'un bien d'un contribuable qui résidait au Canada immédiatement avant son décès est un bien auquel le paragraphe (5) s'appliquerait par ailleurs et qu'il est, par suite du décès du contribuable, transféré ou distribué :

(3) The portion of subsection 70(6.1) of the French version of the Act before paragraph (a) is replaced by the following:

Transfert ou
distribution du
compte de
stabilisation du
revenu net à
l'époux ou au
conjoint de fait
ou à une
fiducie

(6.1) Lorsqu'un bien qui est un compte de stabilisation du revenu net d'un contribuable est transféré ou distribué à l'une des personnes ci-après au moment du décès du contribuable ou postérieurement et par suite de ce décès, les paragraphes (5.4) et 73(5) ne s'appliquent pas au second fonds du compte de stabilisation du revenu net du contribuable :

(4) The portion of paragraph 70(7)(b) of the French version of the Act before subparagraph (i) is replaced by the following:

b) le représentant légal du contribuable peut, dans la déclaration de revenu du contribuable (sauf celle produite en vertu des paragraphes (2) ou 104(23), de l'alinéa 128(2)e ou du paragraphe 150(4)) dans laquelle il énumère un ou plusieurs biens, sauf un compte de stabilisation du revenu net, qui ont été transférés ou distribués à la fiducie au moment du décès du contribuable ou postérieurement et par suite de ce décès et dont la juste valeur marchande globale immédiatement après ce décès est au moins égale au total des dettes non admissibles du contribuable, faire un choix pour que, à la fois :

(5) The portion of subsection 70(9) of the French version of the Act before paragraph (a) is replaced by the following:

Transfert de
biens agricoles
à un enfant

(9) Lorsqu'un fonds de terre ou un bien amortissable d'une catégorie prescrite, qui est situé au Canada et appartient à un contribuable et auquel le paragraphe (5) s'appliquerait par ailleurs, était utilisé, avant le décès du contribuable, principalement dans le cadre d'une entreprise agricole dans laquelle le contribuable, son époux ou conjoint de fait ou l'un de ses enfants soit prenait une part active de façon régulière et continue, soit, s'il s'agit d'un bien utilisé dans le cadre de l'exploitation d'une terre à bois, prenait part dans la mesure requise par un plan d'aménagement forestier visé par règlement relativement à cette terre, que le bien est, par suite du décès du contribuable, transféré ou distribué à un enfant du contribuable qui résidait au Canada immédiatement avant ce décès, et qu'il est démontré, dans les 36 mois suivant ce décès ou, si dans ce délai le représentant légal du contribuable demande par écrit que le présent paragraphe soit applicable, dans un délai plus long que le ministre considère acceptable dans les circonstances, que le bien est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

(6) The portion of subsection 70(9.1) of the French version of the Act before paragraph (a) is replaced by the following:

Transfert aux
enfants de
biens agricoles
de la fiducie

(9.1) Lorsqu'un fonds de terre ou un bien amortissable d'une catégorie prescrite, qui est situé au Canada et appartient à un contribuable, a été transféré ou distribué à une fiducie visée au paragraphe (6) ou 73(1) (dans sa version applicable aux transferts effectués avant 2000) ou à une fiducie à laquelle s'applique le sous-alinéa 73(1.01)c)(i), que ce bien ou un bien de remplacement, à l'égard duquel la fiducie a fait le choix prévu aux paragraphes 13(4) ou 44(1), était utilisé dans le cadre d'une entreprise agricole immédiatement avant le décès de l'époux ou du conjoint de fait du contribuable, lequel époux ou conjoint de fait était bénéficiaire de la fiducie, et que ce bien ou bien de remplacement a été, au décès de l'époux ou du conjoint de fait et par suite de ce décès, transféré ou distribué et est dévolu irrévocablement à un enfant du contribuable qui résidait au Canada immédiatement avant le décès de l'époux ou du conjoint de fait, les règles suivantes s'appliquent :

(7) The portion of subsection 70(9.2) of the French version of the Act before paragraph (a) is replaced by the following:

Transfert de
sociétés et
sociétés de
personnes
agricoles
familiales

(9.2) Lorsque, à un moment donné, un bien d'un contribuable qui était, immédiatement avant le décès de celui-ci, une action du capital-actions d'une société agricole familiale du contribuable ou une participation dans une société de personnes agricole familiale du contribuable et auquel le paragraphe (5) s'appliquerait par ailleurs est, par suite du décès du contribuable, transféré ou distribué à un enfant du contribuable qui résidait au Canada immédiatement avant ce décès, et qu'il est démontré, dans les 36 mois suivant ce décès ou, si le représentant légal du contribuable en fait la demande écrite au ministre dans ce délai, dans un délai plus long que le ministre considère acceptable dans les circonstances, que le bien est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

(8) The portion of subsection 70(9.3) of the French version of the Act before paragraph (b) is replaced by the following:

Transfert
d'une société
ou société de
personnes
agricole
familiale aux
enfants de
l'auteur d'une
fiducie

(9.3) Lorsqu'un bien d'un contribuable a été transféré ou distribué à une fiducie visée au paragraphe (6) ou 73(1) (dans sa version applicable aux transferts effectués avant 2000) ou à une fiducie à laquelle s'applique le sous-alinéa 73(1.01)c(i) et que le bien était :

a) d'une part, immédiatement avant ce transfert ou cette distribution, une action du capital-actions d'une société agricole familiale du contribuable ou une participation dans une société de personnes agricole familiale du contribuable;

(9) The portion of subsection 70(9.3) of the French version of the Act after paragraph (b) and before paragraph (c) is replaced by the following:

et que le bien, après le 10 avril 1978, a été transféré ou distribué, au décès de l'époux ou du conjoint de fait et par suite de ce décès, à un enfant du contribuable qui résidait au Canada immédiatement avant le décès de l'époux ou du conjoint de fait et est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

79. The portion of subsection 72(2) of the French version of the Act before paragraph (a) is replaced by the following:

Choix par les
représentants
légaux et le
bénéficiaire du
transfert
concernant les
provisions

(2) Lorsqu'un bien d'un contribuable qui représente le droit de recevoir une somme a été, au moment du décès du contribuable ou postérieurement et par suite de ce décès, transféré ou distribué à son époux ou conjoint de fait visé à l'alinéa 70(6)a) ou à une fiducie visée à l'alinéa 70(6)b) (appelés « bénéficiaire du transfert » au présent paragraphe), que le contribuable résidait au Canada immédiatement avant son décès et que le représentant légal du contribuable et le bénéficiaire du transfert ont fait, à l'égard du bien, un choix conjoint selon le formulaire prescrit, les règles suivantes s'appliquent :

80. (1) Subsection 73(2) of the Act is replaced by the following:

Capital cost
and amount
deemed
allowed to
spouse, etc., or
trust

(2) If a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1) (b) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, in applying sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the transferee of the particular property is deemed to be the amount that was the capital cost to the taxpayer of the particular property; and

(b) the excess is deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition of the particular property.

(2) Paragraph 73(3)(c) of the Act is replaced by the following:

(c) subsection 69(1) does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

(3) The portion of paragraph 73(3)(d.1) of the English version of the Act before subparagraph (i) is replaced by the following:

(d.1) where the property transferred was eligible capital property of the taxpayer, the child is deemed to have acquired a capital property, immediately after the transfer, at a cost equal to the proceeds of disposition determined under paragraph *(b.1)*, except that, where the child continues to carry on the business previously carried on by the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children, the child is deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to the total of

(4) Paragraph 73(4)(b) of the Act is replaced by the following:

(b) subsection 69(1) does not apply in determining the proceeds of disposition of the property; and

(5) Subsection (1) applies to transfers that occur after 1999.

(6) Subsections (2) and (4) apply to dispositions that occur after December 20, 2002.

81. (1) The Act is amended by adding the following after section 75.1:

75.2 Where an amount paid to acquire a qualifying trust annuity with respect to a taxpayer was deductible under paragraph 60(*l*) in computing the taxpayer's income,

(a) any amount that is paid out of or under the annuity at any particular time after 2005 and before the death of the taxpayer is deemed to have been received out of or under the annuity at the particular time by the taxpayer, and not to have been received by any other taxpayer; and

(b) if the taxpayer dies after 2005

(i) an amount equal to the fair market value of the annuity at the time of the taxpayer's death is deemed to have been received, immediately before the taxpayer's death, by the taxpayer out of or under the annuity, and

(ii) for the purpose of subsection 70(5), the annuity is to be disregarded in determining the fair market value (immediately before the taxpayer's death) of the taxpayer's interest in the trust that is the annuitant under the annuity.

(2) Subsection (1) applies after 2005.

82. (1) Section 80.2 of the Act is replaced by the following:

80.2 (1) Subsections (2) to (13) apply if

(a) in a taxation year, a taxpayer, under the terms of a contract, pays to a person (referred to in this section as the "recipient") an amount (referred to in this section as the "specified amount") that may reasonably be considered to be received by the recipient as a reimbursement of, or a contribution or an allowance in respect of, an amount (referred to in this section as the "original amount")

Rules
applicable
with respect to
"qualifying
trust annuity"

Application

(i) that was described by paragraph 18(1)(m) and was paid or payable by the recipient, or

(ii) that was, in respect of the recipient, an amount described by paragraph 12(1)(o);

(b) the original amount is paid or became payable or receivable in a taxation year or fiscal period of the recipient that begins before 2007; and

(c) the taxpayer is resident in Canada or carries on business in Canada when the specified amount is paid.

Rules relating
to time of
payment

(2) If the specified amount is paid in a taxation year of the taxpayer that begins before 2008, the eligible portion of the specified amount, referred to in subsection (11), is deemed to be a payment described by paragraph 18(1)(m). If, however, the specified amount is paid in a taxation year of the taxpayer that begins after 2007, the specified amount is deemed, for the purpose of applying this section to the taxpayer, to be nil.

Applying
paragraph
18(1)(m)

(3) For the purpose of applying paragraph 18(1)(m) for the taxpayer's taxation year in which the specified amount was paid, the amount to which that paragraph applies is to be determined for that taxation year

(a) if the taxpayer was in existence at the time the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), as if the specified amount were paid by the taxpayer at that time; and

(b) in any other case, as if

(i) the taxpayer were in existence and had a calendar taxation year at the time the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), and

(ii) the specified amount were paid by the taxpayer at that time.

Exception for
certain
partnership
reimburse-
ments

(4) Subsection (3) does not apply to a specified amount paid by a taxpayer

(a) if the recipient is a partnership;

(b) the original amount became receivable by a person referred to in subparagraph 12(1)(o)(i) or became payable to a person referred to in subparagraph 18(1)(m)(i), in a particular fiscal period of the partnership;

(c) the taxpayer is a member of the partnership at the end of the particular fiscal period; and

(d) the taxpayer paid the specified amount before the end of the taxation year of the taxpayer in which that particular fiscal period ends.

Specified amount deemed to be paid at end of taxation year	<p>(5) A specified amount paid by the taxpayer to a partnership is deemed to have been paid on the last day of a particular taxation year of the taxpayer, and not at the time it was paid, if</p> <p>(a) the taxpayer paid an amount to the partnership in the particular taxation year (referred to in this subsection as the “initial payment”);</p> <p>(b) the initial payment was paid before September 17, 2004;</p> <p>(c) the initial payment is an amount to which subsection (3) did not apply because of subsection (4);</p> <p>(d) the taxpayer’s share of the original amount in respect of the initial payment is greater than the initial payment;</p> <p>(e) the specified amount is equal to or less than the difference between the taxpayer’s share of the original amount in respect of the initial payment and the initial payment;</p> <p>(f) the taxpayer elects in the taxpayer’s return of income for the taxpayer’s taxation year that includes the time at which the specified amount would, if this Act were read without reference to this subsection, have been paid, to have this subsection apply to the specified amount; and</p> <p>(g) the specified amount is paid before 2006.</p>
Inclusion in recipient’s income	<p>(6) The recipient shall include in computing the recipient’s income for the taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount, if any, by which the eligible portion of the specified amount exceeds the portion of the original amount that was included in computing the income of the recipient for the taxation year or fiscal period because of paragraph 12(1)(o) or that was not deductible in computing the income of the recipient for the taxation year or fiscal period because of paragraph 18(1)(m).</p>
Interpretation - portion of the original amount	<p>(7) For the purpose of subsection (6), the portion of the original amount that was included in computing the income of the recipient or that was not deductible in computing the income of the recipient is the amount that would be included in computing the income of the recipient under paragraph 12(1)(o) or that would not be deductible in computing the income of the recipient under paragraph 18(1)(m), if the original amount were equal to the eligible portion of the specified amount.</p>
Inclusion in recipient’s income	<p>(8) The recipient shall include, in computing the recipient’s income for its taxation year or fiscal period in which the original amount was paid or became payable or receivable, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount.</p>
Deduction by taxpayer	<p>(9) Subject to paragraphs 18(1)(a) and (b), the taxpayer may deduct in computing the taxpayer’s income for the taxpayer’s taxation year in which the specified amount was paid, the amount, if any, by which the specified amount exceeds the eligible portion of the specified amount.</p>

Specified
amount
deemed not to
be payable or
receivable

(10) Except for the purposes of this section and subparagraph 53(1)(e)(iv.1),

(a) the taxpayer is deemed not to have paid, and not to have been obligated to pay, the specified amount; and

(b) the recipient is deemed not to have received, and not to have been entitled to receive, the specified amount.

Eligible
portion of a
specified
amount

(11) The eligible portion of a specified amount is

(a) an amount equal to the specified amount if

(i) the specified amount was paid before September 17, 2004,

(ii) the original amount is a tax imposed under a provincial law on the production of

(A) petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada if the petroleum, natural gas or related hydrocarbons are not, before extraction, owned by the Crown in right of Canada or a province, or

(B) metals, mineral or coal from a mineral resource located in Canada if the metals, mineral or coal are not, before extraction, owned by the Crown in right of Canada or a province,

(iii) the specified amount does not exceed the taxpayer's share of the original amount, or

(iv) the original amount is a prescribed amount ; and

(b) the taxpayer's share of the original amount, in any other case.

Taxpayer's
share of
original
amount

(12) A taxpayer's share of an original amount in respect of a specified amount paid by the taxpayer to a recipient in respect of a property is the amount that may reasonably be considered to be the taxpayer's share of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property which share may not exceed the total of

(a) that proportion of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property that the taxpayer's share of production from the property payable to the taxpayer as a royalty that is computed without reference to the costs of exploration or production, is of the total production from the property, and

(b) that proportion of the total of all amounts described in paragraph 12(1)(o) or 18(1)(m) in respect of the property (other than those amounts which the recipient has received or is entitled to receive as a reimbursement, contribution or allowance in respect

of a royalty described in paragraph (a)) that the taxpayer's share of the income from the property is of the total income from the property.

Reduction in original amount for Part XII of the regulations

(13) For the purpose of applying Part XII of the *Income Tax Regulations*, an original amount in respect of which a specified amount is received is deemed, for the taxation year in which the original amount was paid or became payable or receivable, not to include an amount equal to the eligible portion of the specified amount.

(2) Subsection (1) applies in respect of specified amounts paid after 2001.

(3) Where a person is liable to an amount of tax under Part I of the Act for a taxation year that exceeds the amount to which the person would be liable if section 80.2 of the Act applied as it read on December 31, 2001, the person is deemed, for the purpose of determining any interest or penalty payable by that person, to have paid the excess on that person's balance due date, if

(a) the person's balance-due date for the taxation year was before September 17, 2004; and

(b) the excess was paid to the Receiver General before March 2005.

(4) Notwithstanding subsections 152(4) to (5) of the Act, all assessments, determinations, and redeterminations may be made as necessary to give effect to subsections (1) to (3).

83. (1) Clause 82(1)(a)(ii)(B) of the Act is replaced by the following:

(B) where the taxpayer is an individual, the total of all amounts each of which is, or is deemed by paragraph 260(12)(b) to have been, an amount paid by the taxpayer in the year and deemed by subsection 260(5.1) to have been received by another person as a taxable dividend,

(2) Subsection (1) applies

(a) to amounts paid in respect of arrangements made after 2001, except that, in its application to amounts paid in respect of an arrangement made before December 21, 2002, clause 82(1)(a)(ii)(B) of the Act, as enacted by subsection (1), is to be read without reference to the expression "or is deemed by paragraph 260(12)(b) to have been" unless an election referred to in paragraph 185(25)(b) of this Act has been made in respect of the arrangement; and

(b) to amounts paid in respect of arrangements made after November 2, 1998 and before 2002, if the parties to the arrangement have made the election referred to in paragraph 185(25)(b) of this Act, except that in its application to those arrangements made before 2002, the reference to "subsection 260(5.1)" in clause 82(1)(a)(ii)(B) of the Act, as enacted by subsection (1), is to be read as a reference to "subsection 260(5)".

84. (1) Subsection 84(4.1) of the Act is replaced by the following:

Deemed
dividend on
reduction of
paid-up capital

(4.1) Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or by way of a transaction described in subsection (2) or section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless

(a) the amount may reasonably be considered to be derived from proceeds of disposition realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred

(i) outside the ordinary course of the business of the corporation, or of the person or partnership that realized the proceeds, and

(ii) within the period that commenced 24 months before the payment; and

(b) no amount that may reasonably be considered to be derived from those proceeds was paid by the public corporation on a previous reduction of the paid-up capital in respect of any class of shares of its capital stock.

(2) Subsection (1) applies to amounts paid after 1996, except that in respect of those amounts paid before February 27, 2004, subsection 84(4.1) of the Act, as enacted by subsection (1), is to be read as follows:

(4.1) Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, acquisition or cancellation of any shares of that class or by way of a transaction described in subsection (2) or in section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless the amount may reasonably be considered to be derived from proceeds of disposition realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred outside the ordinary course of the business of the public corporation, or of the person or partnership that realized the proceeds.

85. (1) The portion of paragraph 85(1)(d.1) of the Act before the description of B is replaced by the following:

(d.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(b) in computing the corporation's income, there shall be added to the amount otherwise determined for C in that paragraph the amount determined by the formula

$$\frac{1}{2} \times [(A \times B/C) - 2(D - E)]$$

where

A is the amount, if any, determined for Q in the definition "cumulative eligible capital" in subsection 14(5) in respect of the taxpayer's business immediately before the time of the disposition,

(2) Subsection 85(1) of the Act is amended by adding the following after paragraph (d.1):

(d.11) for the purpose of determining after the time of the disposition (referred to in this paragraph and in paragraph (d.12) as the “disposition time”) the amount to be included under paragraph 14(1)(a) or (b) in computing the corporation’s income, there shall be added to the amount otherwise determined for each of A and F in the definition “cumulative eligible capital” in subsection 14(5) the amount, if any, determined by the formula

$$A \times B/C$$

where

A is the amount, if any, that would be determined for F in that definition in respect of the taxpayer’s business at the beginning of the taxpayer’s following taxation year if the taxpayer’s taxation year that includes the disposition time had ended immediately after the disposition time and if, in respect of the disposition, this Act were read without reference to paragraph (d.12),

B is the fair market value immediately before the disposition time of the eligible capital property disposed of to the corporation by the taxpayer, and

C is the fair market value immediately before the disposition time of all eligible capital property of the taxpayer in respect of the business;

(d.12) for the purpose of determining after the disposition time the amount to be included under paragraph 14(1)(a) or (b) in computing the taxpayer’s income, the amount, if any, determined by the formula in paragraph (d.11) in respect of the disposition is to be deducted from each of the amounts otherwise determined

(i) by subparagraph 14(1)(a)(ii), and

(ii) for the description of B in paragraph 14(1)(b);

(3) Subsections (1) and (2) apply in respect of dispositions that occur after December 20, 2002.

86. (1) Subparagraphs 86.1(2)(c)(ii) and (iii) of the Act are replaced by the following:

(ii) at the time of the distribution, the shares of the class that includes the original shares are widely held and

(A) are actively traded on a prescribed stock exchange in the United States, or

(B) are required, under the *Securities Exchange Act of 1934* of the United States, as amended from time to time, to be registered with the Securities and Exchange Commission of the United States and are so registered, and

(iii) under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution, the shareholders of the particular corporation who are resident in the United States are not taxable in respect of the distribution;

(2) Subparagraph 86.1(2)(e)(i) of the Act is replaced by the following:

- (i) that, at the time of the distribution, the shares of the class that includes the original shares are shares described in subparagraph (c)(ii) or (d)(ii),

(3) Subparagraph 86.1(2)(e)(vi) of the Act is replaced by the following:

- (vi) in the case of a distribution that is not prescribed, that the distribution is not taxable under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution,

(4) Subsections (1) to (3) apply to distributions made after 1999 except that, with respect to a distribution in respect of original shares described in clause 86.1(2)(c)(ii)(B) of the Act, as enacted by subsection (1),

- (a) information referred to in paragraph 86.1(2)(e) of the Act is deemed to be provided to the Minister of National Revenue on a timely basis if it is provided to that Minister before the 90th day after the day on which this Act is assented to; and

- (b) an election referred to in paragraph 86.1(2)(f) of the Act is deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before the 90th day after the day on which this Act is assented to.

87. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (g.4):

Patronage
dividends

- (g.5) for the purpose of section 135, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Paragraph 87(2)(j.91) of the Act is replaced by the following:

Part I.3 and
Part VI tax

- (j.91) for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any corporation for any taxation year that ends before the amalgamation;

(3) Subsection 87(2) of the Act is amended by adding the following after paragraph (l.3):

Subsection
13(4.2)
election

- (l.4) for the purposes of subsection 13(4.3) and paragraph 20(16.1)(b), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(4) Subsection 87(2) of the Act is amended by adding the following after paragraph (q):

Employees
profit sharing
plan

- (r) an election made under subsection 144(10) by a predecessor corporation is deemed to be an election made by the new corporation;

(5) Paragraph 87(2)(mm) of the Act is repealed.

(6) Section 87 of the Act is amended by adding the following after subsection (2.2):

(2.3) For the purpose of applying this section to an amalgamation governed by section 689 of *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3, an investment deposit of a credit union is deemed to be a share of a separate class of the capital stock of a predecessor corporation in respect of the amalgamation the adjusted cost base and paid up capital of which to the credit union is equal to the adjusted cost base to the credit union of the investment deposit immediately before the amalgamation if

(a) immediately before the amalgamation, the investment deposit is an investment deposit to which section 425 of the *Savings and Credit Unions Act*, R.S.Q., c. C-4.1, applies to the investment fund of that predecessor corporation; and

(b) on the amalgamation the credit union disposes of the investment deposit for consideration that consists solely of shares of a class of the capital stock of the new corporation.

(7) Paragraphs 87(4.4)(c) and (d) of the Act are replaced by the following:

(c) for the consideration under the agreement

(i) a share (in this subsection referred to as the “old share”) of the predecessor corporation that was a flow-through share (other than a right to acquire a share) was issued to the person before the amalgamation, or

(ii) a right was issued to the person before the amalgamation to acquire a share that would, if it were issued, be a flow-through share, and

(d) the new corporation

(i) issues, on the amalgamation and in consideration for the disposition of the old share, a share (in this subsection referred to as a “new share”) of any class of its capital stock to the person (or to any person or partnership that subsequently acquired the old share) and the terms and conditions of the new share are the same as, or substantially the same as, the terms and conditions of the old share, or

(ii) is, because of the right referred to in subparagraph (c)(ii), obliged after the amalgamation to issue to the person a share of any class of the new corporation’s capital stock that would, if it were issued, be a flow-through share,

(8) Subsection 87(9) of the Act is amended by adding the following after paragraph (a.2):

(a.21) for the purpose of paragraph (4.4)(d)

(i) each parent share received by a shareholder of a predecessor corporation is deemed to be a share of the capital stock of the new corporation issued to the shareholder by the new corporation on the merger, and

(ii) any obligation of the parent to issue a share of any class of its capital stock to a person in circumstances described in subparagraph (4.4)(d)(ii) is deemed to be an obligation of the new corporation to issue a share to the person;

(9) Subsection (1) applies to amalgamations that occur, and to windings-up that begin, after 1997.

(10) Subsections (2) and (3) apply to amalgamations that occur, and to windings-up that begin, after December 20, 2002.

(11) Subsection (4) applies to amalgamations that occur, and to windings-up that begin, after 1994.

(12) Subsection (5) applies to amalgamations that occur, and to windings-up that begin, after March 20, 2003.

(13) Subsection (6) applies to amalgamations that occur after June, 2001.

(14) Subsections (7) and (8) apply to amalgamations that occur after 1997.

88. (1) Paragraph 88(1)(c.1) of the Act is replaced by the following:

(c.1) for the purpose of determining after the winding-up the amount to be included under subsection 14(1) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up

(i) there shall be added to the amount otherwise determined for each of A and F in the definition "cumulative eligible capital" in subsection 14(5), the amount, if any, determined for the description of F in that definition in respect of that business immediately before the disposition, and

(ii) there shall be added to the amount determined for the description of C in the formula in paragraph 14(1)(b), one-half of the amount, if any, determined for the description of Q in that definition in respect of that business immediately before the disposition;

(2) Paragraph 88(1)(c.3) of the Act is amended by striking out the word "or" at the end of subparagraph (iv) and by adding the following after subparagraph (v):

(vi) a share of the capital stock of the subsidiary or a debt owing by it, if the share or debt, as the case may be, was owned by the parent immediately before the winding-up, or

(vii) a share of the capital stock of a corporation or a debt owing by a corporation, if the fair market value of the share or debt, as the case may be, was not, at any time after the beginning of the winding-up, wholly or partly attributable to property distributed to the parent on the winding-up;

(3) Subparagraph 88(1)(c.4)(i) of the Act is replaced by the following:

(i) a share of the capital stock of the parent that was

(A) received as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent or by a corporation that was a specified subsidiary corporation of the parent immediately before the acquisition, or

(B) issued for consideration that consists solely of money,

(4) Paragraph 88(1)(e.6) of the Act is replaced by the following:

(e.6) if a subsidiary has made a gift in a taxation year (in this section referred to as the “gift year”), for the purposes of computing the amount deductible under section 110.1 by the parent for its taxation years that end after the subsidiary was wound up, the parent is deemed to have made a gift, in each of its taxation years in which a gift year of the subsidiary ended, equal to the amount, if any, by which the total of all amounts, each of which is the amount of a gift or, in the case of a gift made after December 20, 2002, the eligible amount of the gift, made by the subsidiary in the gift year exceeds the total of all amounts deducted under section 110.1 by the subsidiary in respect of those gifts;

(5) The portion of paragraph 88(1.1)(e) of the Act before subparagraph (i) is replaced by the following:

(e) where control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary’s non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary’s non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year is deductible only

(6) Subsection (1) applies in respect of dispositions that occur after December 20, 2002.

(7) Subsections (2) and (3) apply to windings-up that begin after 1997.

(8) Subsection (4) applies to windings-up that begin after December 20, 2002.

(9) Subsection (5) applies to windings-up that begin after May 1996.

89. (1) The portion of paragraph (f) of the definition “compte de dividendes en capital” in subsection 89(1) of the French version of the Act before clause (i)(B) is replaced by the following:

f) le total des montants représentant chacun un montant relatif à une distribution qu’une fiducie a effectuée sur ses gains en capital en faveur de la société au cours de la période et dont le montant est égal au moins élevé des montants suivants :

(i) l’excédent éventuel du montant visé à la division (A) sur le montant visé à la division (B) :

(A) le montant de la distribution,

(2) The portion of paragraph (g) of the definition “compte de dividendes en capital” in subsection 89(1) of the French version of the Act before subparagraph (ii) is replaced by the following:

g) le total des montants représentant chacun un montant relatif à une distribution qu'une fiducie a effectuée en faveur de la société au cours de la période au titre d'un dividende (sauf un dividende imposable) qui a été versé à la fiducie au cours d'une année d'imposition de celle-ci tout au long de laquelle elle a résidé au Canada, sur une action du capital-actions d'une autre société résidant au Canada, et dont le montant est égal au moins élevé des montants suivants :

(i) le montant de la distribution,

(3) Paragraph (b) of the definition “taxable Canadian corporation” in subsection 89(1) of the Act is replaced by the following:

(b) was not, by reason of a statutory provision other than paragraph 149(1)(t), exempt from tax under this Part;

(4) Subsections (1) and (2) apply to elections in respect of capital dividends that become payable after 1997.

(5) Subsection (3) applies in respect of taxation years that end after 1999.

90. (1) Section 96 of the Act is amended by adding the following after subsection (1):

(1.01) If, at any time in a fiscal period of a partnership, a taxpayer ceases to be a member of the partnership

(a) for the purposes of subsection (1) and sections 34.1, 34.2, 101, 103 and 249.1, and notwithstanding paragraph 98.1(1)(d), the taxpayer is deemed to be a member of the partnership at the end of the fiscal period; and

(b) for the purposes of the application of paragraph (2.1)(b) and subparagraphs 53(1)(e)(i) and (viii) and (2)(c)(i) to the taxpayer, the fiscal period of the partnership is deemed to end

(i) immediately before the time at which the taxpayer is deemed by subsection 70(5) to have disposed of the interest in the partnership, where the taxpayer ceased to be a member of the partnership because of the taxpayer's death, and

(ii) immediately before the time that is immediately before the time that the taxpayer ceased to be a member of the partnership, in any other case.

(2) Paragraph 96(2.4)(a) of the English version of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

(3) Subsection (1) applies in respect of a taxpayer

(a) in the case where the taxpayer ceases to be a member of a partnership because of the taxpayer's death, to the 2003 and subsequent taxation years; and

(b) in any other case, to the 1995 and subsequent taxation years.

(4) Subsection (2) applies after June 20, 2001.

(5) If a taxpayer, who is a member of a partnership at the end of a particular fiscal period, of the partnership, that ends in the taxpayer's 2000 taxation year, so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to,

(a) subsection 96(1.7) of the Act does not apply to the taxpayer's 2000 taxation year;

(b) the taxpayer is deemed to have a capital gain, a capital loss or a business investment loss in respect of the partnership for the particular fiscal period equal to the amount of the taxable capital gain, the allowable capital loss or the allowable business investment loss in respect of the partnership for the particular fiscal period, as the case may be, multiplied by the reciprocal of the fraction in paragraph 38(a) of the Act that applies to the partnership for the particular fiscal period;

(c) the amount of a capital gain, a capital loss or a business investment loss determined under paragraph (b) is deemed to be a capital gain, a capital loss or a business investment loss, as the case may be, of the taxpayer from a disposition of a capital property on the day that the particular fiscal period ends; and

(d) except as provided by this subsection, no amount shall be included in computing the taxpayer's taxable capital gains, allowable capital losses and allowable business investment losses in respect of the taxable capital gains, allowable capital losses and allowable business investment losses of the partnership for the particular fiscal period.

91. Subsection 99(1) of the Act is replaced by the following:

99. (1) Subject to subsection (2), if, at any particular time in a fiscal period of a partnership, the partnership would, if this Act were read without reference to subsection 98(1), have ceased to exist, the fiscal period is deemed to have ended immediately before the time that is immediately before that particular time.

92. (1) Section 100 of the Act is amended by adding the following after subsection (4):

(5) A taxpayer who pays an amount at any time in a taxation year is deemed to have a capital loss from a disposition of property for the year if

(a) the taxpayer disposed of an interest in a partnership before that time or, because of subsection (3), acquired before that time a right to receive property of a partnership;

Fiscal period
of terminated
partnership

Replacement
of partnership
capital

- (b) that time is after the disposition or acquisition, as the case may be;
- (c) the amount would have been described in subparagraph 53(1)(e)(iv) had the taxpayer been a member of the partnership at that time; and
- (d) the amount is paid pursuant to a legal obligation of the taxpayer to pay the amount.

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

93. (1) The portion of subsection 104(1.1) of the Act before paragraph (a) is replaced by the following:

Restricted
meaning of
"beneficiary"

(1.1) Notwithstanding subsection 248(25), for the purposes of subsection (1), paragraph (4)(a.4), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time if the person or partnership is beneficially interested in the trust at the particular time solely because of

(2) Paragraph 104(4)(a.2) of the French version of the Act is replaced by the following:

a.2) lorsque la fiducie effectue une distribution à un bénéficiaire au titre de la participation de celui-ci à son capital, qu'il est raisonnable de conclure que la distribution a été financée par une dette de la fiducie et que l'une des raisons pour lesquelles la dette a été contractée était d'éviter des impôts payables par ailleurs en vertu de la présente partie par suite du décès d'un particulier, le jour où la distribution est effectuée (déterminé comme si, pour la fiducie, la fin d'un jour correspondait au moment immédiatement après celui où elle distribue un bien à un bénéficiaire au titre de la participation de celui-ci à son capital);

(3) Paragraph 104(5.3)(b.1) of the French version of the Act is replaced by the following:

b.1) dans le cas où la fiducie a présenté le formulaire avant mars 1995, l'alinéa b) ne s'applique pas aux distributions qu'elle effectue après février 1995;

(4) Subsection 104(19) of the Act is replaced by the following:

Designation in
respect of
taxable
dividends

(19) A portion of a taxable dividend received by a trust, in a particular taxation year of the trust, on a share of the capital stock of a taxable Canadian corporation is, for the purposes of this Act other than Part XIII, deemed to be a taxable dividend on the share received by a taxpayer, in the taxpayer's taxation year in which the particular taxation year ends, and is, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, deemed not to have been received by the trust, if

(a) an amount equal to that portion

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the total of all amounts each of which is the amount of a taxable dividend, received by the trust in the particular taxation year, on a share of the capital stock of a taxable Canadian corporation.

(5) Subsection 104(21) of the Act is replaced by the following:

(21) For the purposes of sections 3 and 111, except as they apply for the purposes of section 110.6, and subject to paragraph 132(5.1)(b), an amount in respect of a trust's net taxable capital gains for a particular taxation year of the trust is deemed to be a taxable capital gain, for the taxation year of a taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property if

(a) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is

(i) in the particular taxation year, a beneficiary under the trust, and

(ii) resident in Canada, unless the trust is, throughout the particular taxation year, a mutual fund trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the trust's net taxable capital gains for the particular taxation year.

(6) Paragraph 104(21.6)(g) of the Act is replaced by the following:

(f.1) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000;

(g) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year; and

(7) Subsection 104(22) of the Act is replaced by the following:

Designation in respect of foreign source income

(22) For the purposes of this subsection, subsection (22.1) and section 126, an amount in respect of a trust's income for a particular taxation year of the trust from a source in a country other than Canada is deemed to be income of a taxpayer, for the taxation year of the taxpayer in which the particular taxation year ends, from that source if

(a) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14), was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection in respect of that source, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the trust's income for the particular taxation year from that source.

(8) Paragraphs 104(23)(a) and (b) of the Act are repealed.

(9) Subsection (1) applies to the 1998 and subsequent taxation years.

(10) Subsections (4), (5) and (7) apply to taxation years that end after February 27, 2004, except that, for taxation years that end on or before ANNOUNCEMENT DATE, the reference to "paragraph (13)(a)" in subparagraph 104(19)(a)(ii) of the Act, as enacted by subsection (4), in subparagraph 104(21)(a)(ii) of the Act, as enacted by subsection (5), and in subparagraph 104(22)(a)(ii) of the Act, as enacted by subsection (7), is to be read as a reference to "subsection (13)".

(11) Paragraph 104(21.6)(f.1) of the Act, as enacted by subsection (6), applies to taxation years that end after February 27, 2000.

(12) Paragraph 104(21.6)(g) of the Act, as enacted by subsection (6), applies to trust taxation years that end after December 20, 2002.

(13) Subsection (8) applies after December 20, 2002.

94. Subsection 106(3) of the French version of the Act is replaced by the following:

Produit de
disposition
d'une
participation
au revenu

(3) Il est entendu que la fiducie qui, à un moment donné, distribue un de ses biens à un contribuable qui était un de ses bénéficiaires, en règlement total ou partiel de la participation du contribuable au revenu de la fiducie, est réputée avoir disposé du bien pour un produit égal à la juste valeur marchande du bien à ce moment.

95. (1) Subsection 107(1) of the Act is amended by striking out the word “and” at the end of paragraph (c), by adding the word “and” at the end of paragraph (d) and by adding the following after paragraph (d):

(e) if the capital interest is not a capital property of the taxpayer, notwithstanding the definition “cost amount” in subsection 108(1), its cost amount is deemed to be the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and the definition “cost amount” in subsection 108(1), be its cost amount exceeds

(ii) the total of all amounts, each of which is an amount in respect of the capital interest that has become payable to the taxpayer before the disposition and that would be described in subparagraph 53(2)(h)(i.1) if that subparagraph were read without reference to its subclause (B)(I).

(2) Section 107 of the Act is amended by adding the following after subsection (1.1):

(1.2) For the purpose of section 10, the fair market value at any time of a capital interest in a trust is deemed to be equal to the amount that is the total of

(a) the amount that would, if this Act were read without reference to this subsection, be its fair market value at that time, and

(b) the total of all amounts, each of which is an amount that would be described, in respect of the capital interest, in subparagraph 53(2)(h)(i.1) if that paragraph were read without reference to its subclause (B)(I), that has become payable to the taxpayer before that time.

(3) The portion of subsection 107(2) of the French version of the Act before paragraph (a) is replaced by the following:

(2) Sous réserve des paragraphes (2.001), (2.002) et (4) à (5), les règles ci-après s'appliquent dans le cas où, à un moment donné, une fiducie personnelle ou une fiducie visée par règlement effectue, au profit d'un contribuable bénéficiaire, une distribution de ses biens qui donne lieu à la disposition de la totalité ou d'une partie de la participation du contribuable au capital de la fiducie :

(4) Subparagraph 107(2)(b.1)(iii) of the Act is replaced by following:

(iii) in any other case, 50%;

(5) The portion of paragraph 107(2)(c) of the Act before subparagraph (i) is replaced by the following:

Deemed fair
market value
— non-capital
property

Distribution
par une fiducie
personnelle

(c) the taxpayer's proceeds of disposition of the capital interest in the trust (or of the part of it) disposed of by the taxpayer on the distribution are deemed to be equal to the amount, if any, by which

(6) The portion of paragraph 107(2)(d) of the French version of the Act before subparagraph (i) is replaced by the following:

d) lorsque les biens ainsi distribués étaient des biens amortissables de la fiducie, appartenant à une catégorie prescrite, et que le montant du coût en capital de ces biens, supporté par la fiducie, dépasse le coût que le contribuable est réputé, en vertu du présent article, avoir supporté pour les acquérir, pour l'application des articles 13 et 20 et des dispositions réglementaires prises en vertu de l'alinéa 20(1)a) :

(7) Subparagraph 107(2)(d.1)(iii) of the Act is replaced by the following:

(iii) the property was deemed by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) to be taxable Canadian property of the trust; and

(8) The portion of paragraph 107(2)(f) of the French version of the Act before subparagraph (i) is replaced by the following:

f) lorsque les biens ainsi distribués étaient des immobilisations admissibles de la fiducie au titre de son entreprise :

(9) The portion of subparagraph 107(2)(f)(ii) of the French version of the Act after the formula is replaced by the following:

où :

- A représente le montant calculé selon cet élément Q au titre de l'entreprise de la fiducie immédiatement avant la distribution;
- B la juste valeur marchande, immédiatement avant la distribution, des biens ainsi distribués;
- C la juste valeur marchande, immédiatement avant la distribution, de l'ensemble des immobilisations admissibles de la fiducie au titre de l'entreprise.

(10) Subsection 107(2.001) of the French version of the Act is replaced by the following:

(2.001) Lorsqu'une fiducie distribue un bien à l'un de ses bénéficiaires en règlement total ou partiel de la participation de celui-ci à son capital, le paragraphe (2) ne s'applique pas à la distribution si la fiducie en fait le choix dans un formulaire prescrit présenté au ministre avec sa déclaration de revenu pour son année d'imposition où le bien est distribué et si l'un des faits suivants se vérifie :

- a) la fiducie réside au Canada au moment de la distribution;
- b) le bien est un bien canadien imposable;

c) le bien est soit une immobilisation utilisée dans le cadre d'une entreprise que la fiducie exploite par l'entremise d'un établissement stable (au sens du règlement) au Canada immédiatement avant la distribution, soit une immobilisation admissible au titre d'une telle entreprise, soit un bien à porter à l'inventaire d'une telle entreprise.

(11) The portion of subsection 107(2.002) of the French version of the Act before paragraph (b) is replaced by the following:

(2.002) Lorsqu'une fiducie non-résidente distribue un bien (sauf celui visé aux alinéas (2.001)b) ou c)) à l'un de ses bénéficiaires en règlement total ou partiel de la participation de celui-ci à son capital, les règles ci-après s'appliquent si le bénéficiaire en fait le choix en vertu du présent paragraphe dans un formulaire prescrit présenté au ministre avec sa déclaration de revenu pour son année d'imposition où le bien est distribué :

a) le paragraphe (2) ne s'applique pas à la distribution;

(12) The portion of subsection 107(2.01) of the French version of the Act before paragraph (a) is replaced by the following:

(2.01) Lorsqu'une fiducie personnelle distribue à un moment donné, à un contribuable dans les circonstances visées au paragraphe (2), un bien qui serait sa résidence principale, au sens de l'article 54, pour une année d'imposition si elle l'avait désigné comme telle en application de l'alinéa c. 1) de la définition de « résidence principale » à cet article, les règles ci-après s'appliquent si la fiducie en fait le choix dans sa déclaration de revenu pour l'année d'imposition qui comprend ce moment :

(13) The portion of subsection 107(2.1) of the French version of the Act before paragraph (a) is replaced by the following:

(2.1) Lorsque, à un moment donné, une fiducie effectue, au profit d'un de ses bénéficiaires, une distribution de bien qui donnerait lieu à la disposition de la totalité ou d'une partie de la participation du bénéficiaire au capital de la fiducie (laquelle participation ou partie de participation est appelée « ancienne participation » au présent paragraphe) s'il était fait abstraction des alinéas h) et i) de la définition de « disposition » au paragraphe 248(1), et que les règles énoncées au paragraphe (2) et à l'article 132.2 ne s'appliquent pas à la distribution, les règles suivantes s'appliquent :

(14) The portion of paragraph 107(2.1)(c) of the French version of the Act before subparagraph (i) is replaced by the following:

c) sous réserve de l'alinéa e), le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé au moment de la distribution est réputé égal à l'excédent éventuel :

(15) The portion of subparagraph 107(2.1)(d)(iii) of the French version of the Act before clause (B) is replaced by the following:

(iii) le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé au moment de la distribution est réputé égal à l'excédent éventuel de la juste valeur marchande du bien sur le total des montants suivants :

Roulement —
choix d'un
bénéficiaire

Distribution de
résidence
principale

Autres
distributions

(A) la partie du montant de la distribution qui est un paiement auquel s'applique l'alinéa *h*) ou *i*) de la définition de « disposition » au paragraphe 248(1),

(16) Paragraph 107(2.1)(e) of the French version of the Act is replaced by the following:

e) lorsque la fiducie est une fiducie de fonds commun de placement, que la distribution est effectuée au cours d'une de ses années d'imposition qui est antérieure à son année d'imposition 2003, qu'elle a fait, pour l'année, le choix prévu au paragraphe (2.11) et qu'elle en fait le choix relativement à la distribution dans le formulaire prescrit produit avec sa déclaration de revenu pour l'année :

(i) il n'est pas tenu compte de l'alinéa *c*),

(ii) le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé lors de la distribution est réputé égal au montant déterminé selon l'alinéa *a*).

(17) Subsection 107(2.11) of the French version of the Act is replaced by the following:

Gains non
distribués aux
bénéficiaires

(2.11) Lorsqu'une fiducie effectue une ou plusieurs distributions de biens au cours d'une année d'imposition dans les circonstances visées au paragraphe (2.1) (ou, dans le cas d'un bien distribué après le 1^{er} octobre 1996 et avant 2000, dans les circonstances visées au paragraphe (5)), les règles suivantes s'appliquent :

a) si la fiducie réside au Canada au moment de chacune des distributions, son revenu pour l'année (déterminé compte non tenu du paragraphe 104(6)) est calculé, pour l'application des paragraphes 104(6) et (13), sans égard à celles de ces distributions qui ont été effectuées au profit de personnes non-résidentes (y compris les sociétés de personnes autres que les sociétés de personnes canadiennes), si la fiducie en fait le choix dans un formulaire prescrit produit avec sa déclaration de revenu pour l'année ou pour une année d'imposition antérieure;

b) si la fiducie réside au Canada au moment de chacune de ces distributions, son revenu pour l'année (déterminé compte non tenu du paragraphe 104(6)) est calculé, pour l'application des paragraphes 104(6) et (13), sans égard à l'ensemble de ces distributions, si la fiducie en fait le choix dans un formulaire prescrit produit avec sa déclaration de revenu pour l'année ou pour une année d'imposition antérieure.

(18) The portion of subsection 107(2.2) of the French version of the Act before paragraph (a) is replaced by the following:

Entité
intermédiaire

(2.2) Lorsque, à un moment antérieur à 2005, une fiducie visée aux alinéas *h*), *i*) ou *j*) de la définition de « entité intermédiaire » au paragraphe 39.1(1) distribue des biens à l'un de ses bénéficiaires en règlement de tout ou partie des participations de celui-ci dans la fiducie et que le bénéficiaire présente au ministre, au plus tard à la date d'échéance de production qui lui est applicable pour son année d'imposition qui comprend ce moment, un choix concernant les biens sur le formulaire prescrit, le moins élevé des montants ci-après est à

inclure dans le coût, pour le bénéficiaire, d'un bien (sauf de l'argent) qu'il a reçu dans le cadre de la distribution :

(19) The portion of subsection 107(4) of the French version of the Act before paragraph (a) is replaced by the following:

(4) Si les conditions ci-après sont réunies, le paragraphe (2.1), mais non le paragraphe (2), s'applique au bien qu'une fiducie visée à l'alinéa 104(4)a) distribue à un bénéficiaire :

Fiducie en
faveur de
l'époux, du
conjoint de fait
ou de
soi-même

(20) Paragraph 107(4)(b) of the French version of the Act is replaced by the following:

b) le contribuable, l'époux ou le conjoint de fait mentionné au sous-alinéa a)(i), (ii) ou (iii), selon le cas, est vivant le jour de la distribution.

(21) The portion of subsection 107(4.1) of the French version of the Act before paragraph (b) is replaced by the following:

(4.1) Si les conditions ci-après sont réunies, le paragraphe (2.1), mais non le paragraphe (2), s'applique à la distribution d'un bien d'une fiducie personnelle donnée ou une fiducie donnée visée par règlement, effectuée par la fiducie donnée à un contribuable bénéficiaire de cette fiducie :

Cas
d'application
du par. 75(2) à
une fiducie

a) la distribution a été effectuée en règlement de la totalité ou d'une partie de la participation du contribuable au capital de la fiducie donnée;

(22) Subparagraph 107(4.1)(b)(ii) of the French version of the Act is replaced by the following:

(ii) soit d'une fiducie comptant parmi ses biens un bien qui, par suite d'une ou de plusieurs dispositions auxquelles le paragraphe 107.4(3) s'est appliqué, est devenu un bien de la fiducie donnée, lequel bien, après le moment donné et avant la distribution, n'a pas fait l'objet d'une disposition pour un produit de disposition égal à sa juste valeur marchande au moment de la disposition;

(23) Paragraph 107(4.1)(d) of the French version of the Act is replaced by the following:

d) la personne visée au sous-alinéa c)(i) existait au moment de la distribution du bien.

(24) Subsection 107(5) of the Act is replaced by the following:

(4.2) Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed after December 20, 2002 to a beneficiary by a personal trust or a trust prescribed for the purpose of subsection (2), if

Distribution of
property
received on
qualifying
disposition

(a) at a particular time before December 21, 2002 there was a qualifying disposition (within the meaning assigned by subsection 107.4(1)) of the property, or of other property

for which the property is substituted, by a particular partnership or a particular corporation, as the case may be, to a trust; and

(b) the beneficiary is neither the particular partnership nor the particular corporation.

Distribution to
non-resident

(5) Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

(25) The portion of subsection 107(5.1) of the French version of the Act before paragraph (a) is replaced by the following:

Intérêts sur
acomptes
provisionnels

(5.1) Dans le cas où, par le seul effet du paragraphe (5), les alinéas (2)a) à c) ne s'appliquent pas à une distribution de biens canadiens imposables effectuée par une fiducie au cours d'une année d'imposition, le total des impôts payables par la fiducie en vertu de la présente partie et de la partie I.1 pour l'année est réputé, pour l'application des articles 155, 156 et 156.1, des paragraphes 161(2), (4) et (4.01) et des dispositions réglementaires prises en application de ces articles et paragraphes, correspondre au moins élevé des montants suivants :

(26) Paragraph 107(5.1)(b) of the French version of the Act is replaced by the following:

b) le montant qui serait déterminé selon l'alinéa a) si le paragraphe (5) ne s'appliquait pas à chaque distribution, effectuée au cours de l'année, de biens canadiens imposables auxquels les règles énoncées au paragraphe (2) ne s'appliquent pas par le seul effet du paragraphe (5).

(27) Subsections (1) and (2) apply to dispositions that occur, and valuations made,

(a) after 2001 in respect of a qualified trust unit, as defined in subsection 260(1) of the Act, as enacted by subsection 192(5), in respect of

(i) amounts that are described in paragraph 260(5.1)(b) of the Act, as enacted by subsection 192(6), or that would have been so described had no election been made under subsection 192(10), and

(ii) amounts that are received by borrowers under securities lending arrangements from trusts; and

(b) after February 27, 2004, in any other case except that, subject to paragraph (a), subsection (1) does not apply to a disposition of property by a taxpayer after February 27, 2004 and before 2005 pursuant to an agreement in writing made by the taxpayer on or before February 27, 2004.

(28) Subsection (4) and subsection 107(4.2) of the Act, as enacted by subsection (24), apply to distributions made after December 20, 2002.

(29) Subsection (5) applies to distributions made after 1999.

(30) Subsection (7) applies in determining after October 1, 1996 whether property is taxable Canadian property.

(31) Subsection 107(5) of the Act, as enacted by subsection (24), applies to distributions made after February 27, 2004.

96. The portion of section 107.1 of the French version of the Act before paragraph (a) is replaced by the following:

107.1 Lorsque, à un moment donné, des biens d'une fiducie d'employés, d'une fiducie régie par un régime de prestations aux employés ou d'une fiducie visée à l'alinéa a.1) de la définition de « fiducie » au paragraphe 108(1) ont été distribués par la fiducie à un contribuable qui en était un bénéficiaire, en règlement de la totalité ou d'une partie de sa participation dans la fiducie, les règles suivantes s'appliquent :

97. (1) The portion of section 107.2 of the French version of the Act before paragraph (a) is replaced by the following:

107.2 Pour l'application de la présente partie et de la partie XI.3, dans le cas où, à un moment donné, une fiducie régie par une convention de retraite distribue un de ses biens à un contribuable bénéficiaire de la fiducie, en règlement de la totalité ou d'une partie de la participation de celui-ci dans la fiducie, les règles suivantes s'appliquent :

(2) Paragraph 107.2(b) of the French version of the Act is replaced by the following:

b) la fiducie est réputée verser au contribuable, au titre d'une distribution, un montant égal à cette juste valeur marchande;

98. (1) The portion of subsection 107.4(1) of the Act before paragraph (a) is replaced by the following:

107.4 (1) In this section, a “qualifying disposition” of a property means a disposition of the property before December 21, 2002 by a person or partnership, and a disposition of property after December 20, 2002 by an individual, (which person, partnership or individual is referred to in this subsection as the “contributor”) as a result of a transfer of the property to a particular trust where

(2) Paragraph 107.4(1)(c) of the Act is replaced by the following:

(c) the particular trust is resident in Canada at the time of the transfer;

(3) Paragraph 107.4(1)(d) of the Act is repealed.

(4) Subparagraphs 107.4(1)(g)(ii) and (iii) of the French version of the Act are replaced by the following:

(ii) celle commençant après le 17 décembre 1999 et comprenant la disposition de la totalité ou d'une partie d'une participation au capital ou d'une participation au revenu d'une fiducie personnelle, sauf une disposition effectuée uniquement par suite de la distribution d'un bien, d'une fiducie à une personne ou à une société de personnes, en règlement de la totalité ou d'une partie de cette participation,

Distribution
par une fiducie
d'employés ou
un régime de
prestations aux
employés

Montant
provenant
d'une fiducie
de convention
de retraite

Qualifying
disposition

(iii) celle commençant après le 5 juin 2000 et comprenant le transfert d'un bien à la fiducie donnée, effectué en contrepartie de l'acquisition d'une participation au capital de cette fiducie, s'il est raisonnable de considérer que celle-ci a reçu le bien en vue de financer une distribution (sauf celle qui correspond au produit de disposition d'une participation au capital de la fiducie);

(5) Paragraph 107.4(3)(f) of the Act is replaced by the following:

(f) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 44.1(2)(c), 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the transferee trust;

(6) Subsections (1) and (3) are deemed to have come into force on December 20, 2002.

(7) Subsection (2) applies to dispositions that occur after February 27, 2004.

(8) Subsection (5) applies

(a) to dispositions that occur after December 23, 1998; and

(b) in respect of the 1996 and subsequent taxation years, to transfers of capital property that occurred before December 24, 1998.

99. (1) The portion of the definition “testamentary trust” in subsection 108(1) of the Act before paragraph (a) is replaced by the following:

“testamentary
trust”
« fiducie
testamentaire
»

“testamentary trust”, in a taxation year, means a trust that arose on and as a consequence of the death of an individual (including a trust referred to in subsection 248(9.1)), other than

(2) The definition “testamentary trust” in subsection 108(1) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) a trust that, at any time after December 20, 2002 and before the end of the taxation year, incurs a debt or any other obligation owed to, or guaranteed by, a beneficiary or any other person or partnership (which beneficiary, person or partnership is referred to in this paragraph as the “specified party”) with whom any beneficiary of the trust does not deal at arm's length, other than a debt or other obligation

(i) incurred by the trust in satisfaction of the specified party's right as a beneficiary under the trust

(A) to enforce payment of an amount of the trust's income or capital gains payable at or before that time by the trust to the specified party, or

(B) to otherwise receive any part of the capital of the trust,

(ii) owed to the specified party, if the debt or other obligation arose because of a service (for greater certainty, not including any transfer or loan of property) rendered by the specified party to, for or on behalf of the trust, or

(iii) owed to the specified party, if

(A) the debt or other obligation arose because of a payment made by the specified party for or on behalf of the trust,

(B) in exchange for the payment, the trust transfers property, the fair market value of which is not less than the principal amount of that debt or other obligation, to the specified party within 12 months after the payment was made (or, where written application has been made to the Minister by the trust within that 12 months, within any longer period that the Minister considers reasonable in the circumstances), and

(C) it is reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust, except where the trust is the individual's estate and that payment was made within the first 12 months after the individual's death (or, where written application has been made to the Minister by the estate within that 12 months, within any longer period that the Minister considers reasonable in the circumstances);

(3) The portion of the definition “trust” in subsection 108(1) of the Act after paragraph (e.1) and before paragraph (f) is replaced by the following:

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) at any time, does not include

(4) Paragraph (a) of the definition “coût indiqué” in subsection 108(1) of the French version of the Act is replaced by the following:

a) dans le cas où de l'argent ou un autre bien de la fiducie a été distribué par celle-ci au contribuable en règlement de tout ou partie de sa participation au capital (lors de la liquidation de la fiducie ou autrement), du total des montants suivants :

(i) l'argent ainsi distribué,

(ii) les sommes représentant chacune le coût indiqué pour la fiducie, immédiatement avant la distribution, de chacun de ces autres biens,

(5) Subparagraphs (g)(v) and (vi) of the definition “fiducie” in subsection 108(1) of the French version of the Act are replaced by the following:

(v) la fiducie dont les modalités prévoient, à ce moment, que la totalité ou une partie de la participation d'une personne dans la fiducie doit prendre fin par rapport à une période (y compris celle déterminée par rapport au décès de la personne), autrement que par l'effet des modalités de la fiducie selon lesquelles une participation dans la fiducie doit prendre fin par suite de la distribution à la personne (ou à sa succession) d'un bien de la fiducie, si la juste valeur marchande du bien à distribuer doit être proportionnelle à celle de cette participation immédiatement avant la distribution,

(vi) la fiducie qui, avant ce moment et après le 17 décembre 1999, a effectué une distribution en faveur d'un bénéficiaire au titre de la participation de celui-ci à son capital, s'il est raisonnable de considérer que la distribution a été financée par une dette de la fiducie et si l'une des raisons pour lesquelles la dette a été contractée était d'éviter

des impôts payables par ailleurs en vertu de la présente partie par suite du décès d'un particulier.

(6) The definition “montant de réduction admissible” in subsection 108(1) of the French version of the Act is replaced by the following:

« montant de
réduction
admissible »
“eligible
offset”

« montant de réduction admissible » En ce qui concerne un contribuable à un moment donné relativement à la totalité ou à une partie de sa participation au capital d'une fiducie, toute partie de dette ou d'obligation qui est prise en charge par le contribuable et qu'il est raisonnable de considérer comme étant imputable à un bien distribué à ce moment en règlement de la participation ou de la partie de participation, si la distribution est conditionnelle à la prise en charge par le contribuable de la partie de dette ou d'obligation.

(7) Subsections (1) and (2) apply to taxation years that end after December 20, 2002, except that

(a) a transfer that is required, by clause (d)(iii)(B) of the definition “testamentary trust” in subsection 108(1) of the Act, as enacted by subsection (2), to be made within 12 months after a payment was made is deemed to be made in a timely manner if it is made within 12 months after this Act is assented to; and

(b) for those taxation years that end before the day on which this Act is assented to, the reference to “the individual's death” in clause (d)(iii)(C) of the definition “testamentary trust” in subsection 108(1) of the Act, as enacted by subsection (2), shall be read as a reference to “the day on which the *Income Tax Amendments Act, 2005* is assented to”.

(8) Subsection (3) applies to the 1998 and subsequent taxation years.

100. (1) Paragraph 110(1)(k) of the Act is replaced by the following:

Part VI.1 tax

(k) three times the tax payable under subsection 191.1(1) by the taxpayer for the year.

(2) Subsection 110(1.7) of the Act is replaced by the following:

Reduction in
exercise price

(1.7) If the amount payable by a taxpayer to acquire securities under an agreement referred to in subsection 7(1) is reduced at any particular time and the conditions in subsection (1.8) are satisfied in respect of the reduction,

(a) the rights (referred to in this subsection and subsection (1.8) as the “old rights”) that the taxpayer had under the agreement immediately before the particular time are deemed to have been disposed of by the taxpayer immediately before the particular time;

(b) the rights (referred to in this subsection and subsection (1.8) as the “new rights”) that the taxpayer has under the agreement at the particular time are deemed to be acquired by the taxpayer at the particular time; and

(c) the taxpayer is deemed to receive the new rights as consideration for the disposition of the old rights.

Conditions for
subsection
(1.7) to apply

(1.8) The following are the conditions in respect of the reduction:

(a) that the taxpayer would not be entitled to a deduction under paragraph (1)(d) if the taxpayer acquired securities under the agreement immediately after the particular time and this section were read without reference to subsection (1.7); and

(b) that the taxpayer would be entitled to a deduction under paragraph (1)(d) if the taxpayer

(i) disposed of the old rights immediately before the particular time,

(ii) acquired the new rights at the particular time as consideration for the disposition, and

(iii) acquired securities under the agreement immediately after the particular time.

(3) Subsection (1) applies to the 2003 and subsequent taxation years.

(4) Subsection (2) applies to reductions that occur after 1998.

(5) An election by a taxpayer under subsection 7(10) of the Act to have subsection 7(8) of the Act apply is deemed to have been filed in a timely manner if

(a) it is filed on or before the 60th day after the day on which this Act is assented to;

(b) it is in respect of a security acquired by the taxpayer before the day on which this Act is assented to;

(c) the taxpayer is entitled to a deduction under paragraph 110(1)(d) of the Act in respect of the acquisition; and

(d) the taxpayer would not have been so entitled if subsection 110(1.7) of the Act, as enacted by subsection (2), did not apply.

101. (1) The portion of paragraph 110.1(1)(a) of the Act before subparagraph (i) is replaced by the following:

(a) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (b), (c) or (d)) made by the corporation in the year or in any of the five preceding taxation years to

(2) Paragraph 110.1(1)(a) of the Act is amended by adding the following after subparagraph (iv):

(iv.1) a municipal or public body performing a function of government in Canada,

(3) The description of B in paragraph 110.1(1)(a) of the Act is replaced by the following:

B is the total of all amounts, each of which is that proportion of the corporation's taxable capital gain for the taxation year in respect of a gift made by the corporation in the taxation year (in respect of which gift an eligible amount is described in this paragraph for the taxation year) that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift,

(4) Clause (B) in the description of D in paragraph 110.1(1)(a) of the Act is replaced by the following:

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class by the corporation in the year (in respect of which gift an eligible amount is described in this paragraph for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceeds any outlays and expenses, to the extent that they were made or incurred by the corporation for the purpose of making the disposition, that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the corporation of the property, that the eligible amount of the gift is of the corporation's proceeds of disposition in respect of the gift;

(5) The portion of paragraph 110.1(1)(b) of the Act before subparagraph (i) is replaced by the following:

Gifts to Her Majesty

(b) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (c) or (d)) made by the corporation to Her Majesty in right of Canada or of a province

(6) Paragraphs 110.1(1)(c) and (d) of the Act are replaced by the following:

Gifts to institutions

(c) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (d)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the five preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

Ecological gifts

(d) the total of all amounts each of which is the eligible amount of a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(i) the fair market value of the gift is certified by the Minister of the Environment,

(ii) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada's environmental heritage, and

(iii) the gift was made by the corporation in the year or in any of the five preceding taxation years to

(A) Her Majesty in right of Canada or of a province,

(B) a municipality in Canada,

(C) a municipal or public body performing a function of government in Canada, or

(D) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift.

(7) The portion of subsection 110.1(2) of the Act before paragraph (a) is replaced by the following:

Proof of gift

(2) An eligible amount of a gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is evidenced by filing with the Minister

(8) Subsection 110.1(3) of the Act is replaced by the following:

Where
subsection (3)
applies

(2.1) Subsection (3) applies in circumstances where

(a) a corporation makes a gift at any time of

(i) capital property to a donee described in paragraph (1)(a), (b) or (d), or

(ii) in the case of a corporation not resident in Canada, real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the corporation that includes that time (determined without reference to the proceeds of disposition designated in respect of the property under subsection (3)) and the adjusted cost base to the corporation of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the corporation of the property immediately before that time.

Gifts of capital
property

(3) If this subsection applies in respect of a gift by a corporation of property, and the corporation designates an amount in respect of the gift in its return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be its proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(b) the amount determined under subparagraph (2.1)(b)(i) or (ii), as the case may be, in respect of the property.

Gifts made by
partnership

(9) Subsection 110.1(4) of the Act is replaced by the following:

(4) If at the end of a fiscal period of a partnership a corporation is a member of the partnership, its share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

(10) The portion of paragraph 110.1(5)(b) of the Act before subparagraph (i) is replaced by the following:

(b) where the gift is a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, the greater of

(11) Subsections (1), (3) to (7), (9) and (10) apply to gifts made after December 20, 2002.

(12) Subsection (2) applies to gifts made after May 8, 2000.

(13) For gifts made after May 8, 2000 and before December 21, 2002, subparagraph 110.1(1)(d)(i) of the Act is to be read as follows:

(i) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(14) Subsection (8) applies to gifts made after 1999 except that, for gifts made after 1999 and on or before December 20, 2002, the reference to “subsection 248(31)” in subsection 110.1(3) of the Act, as enacted by subsection (8), is to be read as a reference to “subsection (1)”.

102. (1) Paragraph 110.6(7)(b) of the French version of the Act is replaced by the following:

b) soit dans laquelle une société ou une société de personnes acquiert un bien pour une contrepartie bien inférieure à sa juste valeur marchande au moment de l'acquisition, sauf si l'acquisition résulte d'une fusion ou d'une unification de sociétés, de la liquidation d'une société ou d'une société de personnes ou d'une distribution de biens d'une fiducie en règlement de tout ou partie d'une participation d'une société au capital de la fiducie.

(2) Subsection 110.6(14) of the Act is amended by adding the following after paragraph (d):

(d.1) a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership;

(3) Subsection (2) applies

(a) to dispositions that occur after December 20, 2002; and

(b) to dispositions made by a taxpayer after 1999, if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the

taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to.

103. (1) Subsection 111(1.1) of the Act is amended by striking out the word “and” at the end of paragraph (a), by adding the word “and” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) the amount, if any, that the Minister determines to be reasonable in the circumstances, after considering the application of subsections 104(21.6), 130.1(4), 131(1) and 138.1(3.2) to the taxpayer for the particular year.

(2) The description of C in the definition “pre-1986 capital loss balance” in subsection 111(8) of the Act is replaced by the following:

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years that ended before 1988 or begin after October 17, 2000,

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years.

104. (1) The portion of subsection 116(5.2) of the Act before paragraph (a) is replaced by the following:

(5.2) If a non-resident person has, in respect of a disposition, or a proposed disposition, in a taxation year to a taxpayer of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property, or an immovable, situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property, eligible capital property that is a taxable Canadian property or any interest in, or for civil law any right in, or any option in respect of, a property to which this subsection applies (whether or not that property exists),

(2) Paragraph 116(6)(f) of the Act is replaced by the following:

(f) property of an authorized foreign bank that carries on a Canadian banking business;

(3) Subsection (1) applies after December 23, 1998.

(4) Subsection (2) applies after June 27, 1999.

105. (1) The description of C in subparagraph (a)(ii) of the description of B in subsection 118(1) of the English version of the Act is replaced by the following:

C is the greater of \$606 and the income of the individual's spouse or common-law partner for the year or, where the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's or common-law partner's income for the year while married or in a common-law partnership and not so separated,

(2) Paragraph (a) of the definition “pension income” in subsection 118(7) of the Act is amended by adding the following after subparagraph (iii):

(iii.1) a payment (other than a payment described in subparagraph (i)) payable on a periodic basis under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan,

(3) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

(4) Subsection (2) applies to the 2004 and subsequent taxation years.

106. (1) The definition “total ecological gifts” in subsection 118.1(1) of the Act is replaced by the following:

“total
ecological
gifts”
« total des
dons de biens
écosensibles »

“total ecological gifts”, in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition “total cultural gifts”) of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(a) the fair market value of the gift is certified by the Minister of the Environment,

(b) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada’s environmental heritage, and

(c) the gift was made by the individual in the year or in any of the five preceding taxation years to

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada’s environmental heritage, and that is approved by that Minister or that person in respect of the gift,

to the extent that those amounts were not included in determining an amount that was deducted under this section in computing the individual’s tax payable under this Part for a preceding taxation year;

(2) The portion of the definition “total charitable gifts” in subsection 118.1(1) of the Act before paragraph (a) is replaced by the following:

“total
charitable
gifts”
« total des
dons de
bienfaisance »

“total charitable gifts”, in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition “total Crown gifts”, “total cultural gifts” or “total ecological gifts”) made by the individual in the year or in any of the five preceding taxation years (other than in a year for

which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

(3) Paragraph (d) of the definition “total charitable gifts” in subsection 118.1(1) of the Act is replaced by the following:

(d) a municipality in Canada,

(d.1) a municipal or public body performing a function of government in Canada,

(4) The portion of the definition “total Crown gifts” in subsection 118.1(1) of the Act before paragraph (a) is replaced by the following:

“total Crown
gifts”
« total des
dons à l'État »

“total Crown gifts”, in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition “total cultural gifts” or “total ecological gifts”) made by the individual in the year or in any of the five preceding taxation years to Her Majesty in right of Canada or of a province, to the extent that those amounts were

(5) The portion of the definition “total cultural gifts” in subsection 118.1(1) of the Act before paragraph (a) is replaced by the following:

“total cultural
gifts”
« total des
dons de biens
culturels »

“total cultural gifts”, in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift

(6) The description of B in subparagraph (a)(iii) of the definition “total gifts” in subsection 118.1(1) of the Act is replaced by the following:

B is the total of all amounts, each of which is that proportion of the individual's taxable capital gain for the taxation year in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift,

(7) Clause (B) in the description of D in subparagraph (a)(iii) of the definition “total gifts” in subsection 118.1(1) of the Act is replaced by the following:

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the individual in the year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceed any outlays and expenses, to the extent that they were made or incurred by the individual for the purpose of making the disposition, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the individual of the property, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

(8) The portion of subsection 118.1(2) of the Act before paragraph (a) is replaced by the following:

Proof of gift

(2) An eligible amount of a gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(9) Subsection 118.1(6) of the Act is replaced by the following:

Where
subsection (6)
applies

(5.4) Subsection (6) applies in circumstances where

(a) an individual

(i) makes a gift (by the individual's will or otherwise) at any time of capital property to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection (1), or

(ii) who is non-resident, makes a gift (by the individual's will or otherwise) at any time of real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the individual that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (6)) and the adjusted cost base to the individual of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the individual of the property immediately before that time.

Gifts of capital
property

(6) If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(b) the amount determined under subparagraph (5.4)(b)(i) or (ii), as the case may be, in respect of the property.

(10) Paragraph 118.1(7)(b) of the French version of the Act is replaced by the following:

b) le montant indiqué par le particulier ou par son représentant légal dans la déclaration de revenu du particulier produite conformément à l'article 150 pour l'année du don est réputé correspondre à la fois au produit de disposition de l'œuvre d'art pour le particulier et, pour l'application du paragraphe 248(31), à la juste valeur marchande de l'œuvre d'art; toutefois, il ne peut ni excéder la juste valeur marchande de l'œuvre d'art, déterminée par ailleurs, ni être inférieur au plus élevé des montants suivants :

- (i) le montant de l'avantage au titre du don,
- (ii) le coût indiqué de l'œuvre d'art pour le particulier.

(11) Paragraph 118.1(7)(d) of the English version of the Act is replaced by the following:

(d) the amount that the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is deemed to be the individual's proceeds of disposition of the work of art and, for the purpose of subsection 248(31), the fair market value of the work of art, but the amount so designated may not exceed the fair market value otherwise determined of the work of art and may not be less than the greater of

- (i) the amount of the advantage, if any, in respect of the gift, and
- (ii) the cost amount to the individual of the work of art.

(12) Paragraph 118.1(7.1)(b) of the French version of the Act is replaced by the following:

b) le particulier est réputé avoir reçu, au moment donné pour l'œuvre d'art, un produit de disposition égal au coût indiqué de l'œuvre d'art pour lui à ce moment ou, s'il est plus élevé, au montant de l'avantage au titre du don.

(13) Paragraph 118.1(7.1)(d) of the English version of the Act is replaced by the following:

(d) the individual is deemed to have received at the particular time proceeds of disposition in respect of the work of art equal to the greater of its cost amount to the individual at that time and the amount of the advantage, if any, in respect of the gift.

(14) Subsection 118.1(8) of the Act is replaced by the following:

(8) If at the end of a fiscal period of a partnership an individual is a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the individual in the individual's taxation year in which the fiscal period of the partnership ends.

(15) Paragraphs 118.1(13)(b) and (c) of the Act are replaced by the following:

(b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that property is deemed to be the lesser of the fair market value of the security at the subsequent time and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of the individual or a property that would be a non-qualifying security of the individual if the individual were alive at that time) received by the donee for the disposition and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year; and

(16) Subsections (1), (2), (4) to (8) and (10) to (15) apply to gifts made after December 20, 2002. In addition, for gifts made after May 8, 2000 but on or before December 20, 2002, paragraph (a) of the definition "total ecological gifts" in subsection 118.1(1) of the Act is to be read as follows:

(a) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(17) Subsection (3) applies to gifts made after May 8, 2000.

(18) Subsection (9) applies to gifts made after 1999 except that, for gifts made after 1999 but on or before December 20, 2002, the reference to "subsection 248(31)" in subsection 118.1(6) of the Act, as enacted by subsection (9), shall be read as a reference to "subsection (1)".

107. (1) Subparagraph 118.2(2)(c)(i) of the Act is replaced by the following:

(i) the patient is, and has been certified in writing by a medical practitioner to be, a person who, by reason of mental or physical infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for the patient's personal needs and care and who, as a result, requires a full-time attendant,

(2) Paragraphs 118.2(2)(d) and (e) of the Act are replaced by the following:

(d) for the full-time care in a nursing home of the patient, who has been certified in writing by a medical practitioner to be a person who, by reason of lack of normal mental capacity, is and in the foreseeable future will continue to be dependent on others for the patient's personal needs and care;

(e) for the care, or the care and training, at a school, an institution or another place of the patient, who has been certified in writing by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

(3) Subparagraph 118.2(2)(g)(ii) of the Act is replaced by the following:

(ii) one individual who accompanied the patient, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling without the assistance of an attendant

(4) Paragraph 118.2(2)(h) of the Act is replaced by the following:

(h) for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 km from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii) to (v) apply;

(5) The portion of paragraph 118.2(2)(1.1) of the French version of the Act before subparagraph (i) is replaced by the following:

1.1) au nom du particulier, de son époux ou conjoint de fait ou d'une personne à charge visée à l'alinéa a), qui doit subir une transplantation de la moelle osseuse ou d'un organe :

(6) Subsections (1) to (5) apply to certifications made after December 20, 2002.

108. (1) Paragraph 118.3(2)(a) of the French version of the Act is replaced by the following:

a) d'une part, le particulier demande pour l'année, pour cette personne, une déduction prévue au paragraphe 118(1), soit par application de l'alinéa 118(1)b), soit, si la personne est le père, la mère, le grand-père, la grand-mère, un enfant, un petit-enfant, le frère, la sœur, la tante, l'oncle, le neveu ou la nièce du particulier ou de son époux ou conjoint de fait, par application des alinéas 118(1)c. 1) ou d), ou aurait pu demander une telle déduction pour l'année si cette personne n'avait eu aucun revenu pour l'année et avait atteint l'âge de 18 ans avant la fin de l'année et, dans le cas de la déduction prévue à l'alinéa 118(1)b), si le particulier n'avait pas été marié ou n'avait pas vécu en union de fait;

(2) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

109. Subparagraph 118.5(1)(a)(iii) of the Act is replaced by the following:

(iii) are paid on behalf of, or reimbursed to, the individual by the individual's employer and the amount paid or reimbursed is not included in the individual's income,

110. (1) Subparagraph (a)(i) of the definition “designated educational institution” in subsection 118.6(1) of the Act is replaced by the following:

(i) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Education of the Province of Quebec for the purposes of *An Act respecting financial assistance for education expenses*, R.S.Q, c. A-13.3, or

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

111. (1) The description of C in subsection 118.61(1) of the Act is replaced by the following:

C is the lesser of the value of B and the amount that would be the individual’s tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7);

(2) Paragraph 118.61(2)(b) of the Act is replaced by the following:

(b) the amount that would be the individual’s tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7).

(3) Subsections (1) and (2) apply to the 2002 and subsequent taxation years.

112. (1) Paragraph 120.2(3)(b) of the Act is replaced by the following:

(b) the amount that, if this Act were read without reference to section 120, would be the individual’s tax payable under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4, and

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

113. (1) The portion of paragraph 120.31(3)(b) of the Act before subparagraph (i) is replaced by the following:

(b) if the eligible taxation year ended before the taxation year preceding the year of receipt, an amount equal to the amount that would be calculated as interest payable on the amount, if any, by which the amount determined under paragraph (a) in respect of the eligible taxation year exceeds the taxpayer’s tax payable under this Part for that year, if the amount that would be calculated as interest payable on that excess were calculated

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

114. (1) The portion of subparagraph (b)(ii) of the definition “split income” in subsection 120.4(1) of the English version of the Act before clause (A) is replaced by the following:

(ii) can reasonably be considered to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

(2) The portion of clause (c)(ii)(C) of the definition “split income” in subsection 120.4(1) of the English version of the Act before subclause (1) is replaced by the following:

(C) to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

(3) Subsections (1) and (2) apply in computing split income of a specified individual for taxation years that begin after December 20, 2002, other than in computing an amount included in that income that is from a trust or partnership for a taxation year or fiscal period of the trust or partnership that began before December 21, 2002.

115. (1) The portion of subsection 122.3(1) of the Act before paragraph (a) is replaced by the following:

122.3 (1) If an individual is resident in Canada in a taxation year and, throughout any period of more than six consecutive months that began before the end of the year and included any part of the year (in this section referred to as the “qualifying period”)

(2) Subsection 122.3(1.1) of the Act is replaced by the following:

(1.1) No amount may be included under paragraph (1)(d) in respect of an individual’s income for a taxation year from the individual’s employment by an employer

(a) if

(i) the employer carries on a business of providing services and does not employ in the business throughout the year more than five full-time employees,

(ii) the individual

(A) does not deal at arm’s length with the employer, or is a specified shareholder of the employer, or

(B) where the employer is a partnership, does not deal at arm’s length with a member of the partnership, or is a specified shareholder of a member of the partnership, and

(iii) but for the existence of the employer, the individual would reasonably be regarded as being an employee of a person or partnership that is not a specified employer; or

(b) if at any time in that portion of the qualifying period that is in the taxation year

(i) the employer provides the services of the individual to a corporation, partnership or trust with which the employer does not deal at arm’s length, and

(ii) the fair market value of all the issued shares of the capital stock of the corporation or of all interests in the partnership or trust, as the case may be, that are held, directly or indirectly, by persons who are resident in Canada is less than 10% of the fair market value of all those shares or interests.

(3) Subsections (1) and (2) apply to taxation years that begin after the day on which this Act is assented to.

Overseas
employment
tax credit

Excluded
income

116. (1) Subparagraph 125(1)(b)(ii) of the Act is replaced by the following:

(ii) three times the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to section 123.4, and

(2) The description of B in subsection 125(5.1) of the Act is replaced by the following:

B is

(a) if, in both the particular taxation year and the preceding taxation year, the corporation is not associated with any corporation, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the preceding taxation year,

(b) if, in the particular taxation year, the corporation is not associated with any corporation but was associated with one or more corporations in the preceding taxation year, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the particular taxation year, and

(c) if, in the particular taxation year, the corporation is associated with one or more particular corporations, the amount determined by the formula

$$0.225\% \times (D - E)$$

where

D is the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation or of any of the particular corporations for its last taxation year that ended in the preceding calendar year, and

E is \$10 million.

(3) Subsection (1) applies to the 2003 and subsequent taxation years.

(4) Subsection (2) applies to taxation years that begin after December 20, 2002.

117. (1) Subparagraph 125.1(1)(b)(ii) of the Act is replaced by the following:

(ii) three times the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation if those amounts were determined without reference to section 123.4, and

(2) The definition "bénéfices de fabrication et de transformation au Canada" in subsection 125.1(3) of the French version of the Act is replaced by the following:

« bénéfices de fabrication et de transformation au Canada »
"Canadian manufacturing and processing profits"

« bénéfices de fabrication et de transformation au Canada » En ce qui concerne une société pour une année d'imposition, la partie du total des montants représentant chacun le revenu que la société a tiré pour l'année d'une entreprise exploitée activement au Canada, déterminé en vertu des règles établies à cette fin par règlement pris sur recommandation du ministre des Finances, qui doit s'appliquer à la fabrication ou à la transformation au Canada de marchandises destinées à la vente ou à la location.

(3) Subparagraphs (I)(i) and (ii) of the definition “fabrication ou transformation” in subsection 125.1(3) of the French version of the Act are replaced by the following:

(i) de la vente ou de la location de marchandises qu'elle a fabriquées ou transformées au Canada,

(ii) de la fabrication ou de la transformation au Canada de marchandises destinées à la vente ou à la location, sauf des marchandises qu'elle devait vendre ou louer elle-même.

(4) Subsection (1) applies to the 2003 and subsequent taxation years.

118. (1) The definition “taxable resource income” in subsection 125.11(1) of the Act is replaced by the following:

“taxable resource income”, of a taxpayer for a taxation year, is the lesser of

(a) the amount, if any, by which the taxpayer's taxable income for the taxation year exceeds 100/16 of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year, and

(b) the amount determined by the formula

$$3(A/B) + C - D - \underline{E}$$

where

A is the total of all amounts each of which is deducted by the taxpayer under paragraph 20(1)(v.1) in computing the taxpayer's income for the taxation year,

B is the percentage that is the total of

(i) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(ii) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(iii) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(iv) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(v) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year,

C is total of all amounts included in computing the taxpayer's income for the taxation year under paragraph 59(3.2)(b) or (c),

“taxable
resource
income”
« *revenu
imposable
provenant de
ressources* »

D is the total of all amounts deducted by the taxpayer under any of sections 65 to 66.7, other than subsections 66(4), 66.21(4) and 66.7(2) and (2.3), of this Act, and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*, in computing the taxpayer's income for the taxation year, and

E is 100/16 of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year.

(2) Subsection (1) applies to taxation years that begin after February 27, 2004.

119. (1) The definition "investor" in subsection 125.4(1) of the Act is repealed.

(2) The definitions "assistance" and "salary or wages" in subsection 125.4(1) of the Act are replaced by the following:

"assistance"
« montant
d'aide »

"assistance" means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing a taxpayer's income for any taxation year if that paragraph were read without reference to

(a) subparagraphs 12(1)(x)(v) to (viii), if the amount were received

(i) from a person or partnership described in subparagraph 12(1)(x)(ii), or

(ii) in circumstances where clause 12(1)(x)(i)(C) applies; and

(b) subparagraphs 12(1)(x)(v) to (vii), in any other case.

"salary or
wages"
« traitement
ou salaire »

"salary or wages" does not include an amount

(a) described in section 7;

(b) determined by reference to profits or revenues; or

(c) paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

(3) The definition "Canadian film or video production certificate" in subsection 125.4(1) of the Act is replaced by the following:

"Canadian
film or video
production
certificate"
« certificat de
production
cinématograp
hique ou
magnétoscopi-
que
canadienne »

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(a) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(i) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(ii) a prescribed taxable Canadian corporation related to the qualified corporation, or

(iii) any combination of corporations described in subparagraph (i) or (ii); and

(b) public financial support of the production would not be contrary to public policy.

(4) The portion of the definition “labour expenditure” in subsection 125.4(1) of the Act before subparagraph (b)(i) is replaced by the following:

“labour
expenditure”
« dépense de
main-d’œuvre
»

“labour expenditure”, of a corporation for a taxation year in respect of a Canadian film or video production, means, in the case of a corporation that is not a qualified corporation for the taxation year, nil, and in the case of a corporation that is a qualified corporation for the taxation year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost to, or in the case of depreciable property the capital cost to, the corporation, or any other person or partnership, of the production:

(a) the salary or wages directly attributable to the production that are incurred after 1994 and in the taxation year, or the preceding taxation year, by the corporation for the stages of production of the property, from the production commencement time to the end of the post-production stage, and paid by it in the taxation year or within 60 days after the end of the taxation year (other than amounts incurred in that preceding taxation year that were paid within 60 days after the end of that preceding taxation year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding taxation year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the taxation year, or that preceding taxation year, to the corporation for the stages of production, from the production commencement time to the end of the post-production stage, and that is paid by it in the taxation year or within 60 days after the end of the taxation year to

(5) The portion of the definition “qualified labour expenditure” in subsection 125.4(1) of the Act before paragraph (a) is replaced by the following:

“qualified
labour
expenditure”
« dépense de
main-d’œuvre
admissible »

“qualified labour expenditure”, of a corporation for a taxation year in respect of a Canadian film or video production, means the lesser of

(6) The portion of the description of A in paragraph (b) of the definition “qualified labour expenditure” in subsection 125.4(1) of the Act before subparagraph (ii) is replaced by the following:

A is 60% of the amount by which

(i) the total of all amounts each of which is an expenditure by the corporation in respect of the production that is included in the cost to, or in the case of depreciable property the capital cost to, the corporation or any other person or partnership of the production at the end of the taxation year,

exceeds

(7) Subsection 125.4(1) of the Act is amended by adding the following in alphabetical order:

“production
commencement
time”
« *début de la
production* »

“production commencement time”, in respect of a Canadian film or video production, means the earlier of

(a) the time at which principal photography of the production begins, and

(b) the latest of

(i) the time at which a qualified corporation that has an interest in, or for civil law a right in, the production, or the parent of the corporation, first makes an expenditure for salary or wages or other remuneration for activities, of scriptwriters, that are directly attributable to the development by the corporation of script material of the production,

(ii) the time at which the corporation or the parent of the corporation acquires a property, on which the production is based, that is a published literary work, screenplay, play, personal history or all or part of the script material of the production, and

(iii) two years before the date on which principal photography of the production begins.

“script
material”
« *texte* »

“script material”, in respect of a production, means written material describing the story on which the production is based and, for greater certainty, includes a draft script, an original story, a screen story, a narration, a television production concept, an outline or a scene-by-scene schematic, synopsis or treatment.

(8) The portion of subsection 125.4(2) of the Act before paragraph (b) is replaced by the following:

Rules
governing
labour
expenditures
of a
corporation

(2) For the purposes of the definitions “labour expenditure” and “qualified labour expenditure” in subsection (1),

(a) remuneration does not include remuneration

(i) determined by reference to profits or revenues, or

(ii) in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen;

(9) Subsection 125.4(2) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) an expenditure incurred in respect of a film or video production by a qualified corporation (in this paragraph referred to as the “co-producer”) in respect of goods supplied or services rendered by another qualified corporation to the co-producer in respect of the production is not a labour expenditure to the co-producer or, for the purpose of applying of this section to the co-producer, a cost or capital cost of the production.

(10) Subsection 125.4(4) of the Act is replaced by the following:

Exception (4) This section does not apply to a Canadian film or video production if the production — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law a right in, the production — is a tax shelter investment for the purpose of section 143.2.

(11) Subsection 125.4(6) of the Act is replaced by the following:

Revocation of a certificate (6) If an omission or incorrect statement was made for the purpose of obtaining a Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production,

(a) the Minister of Canadian Heritage may

(i) revoke the certificate, or

(ii) if the certificate was issued in respect of productions included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

(b) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

(c) for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

(12) Section 125.4 of the Act is amended by adding the following after subsection (6):

Guidelines (7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances under which the conditions in paragraphs (a) and (b) of the definition of “Canadian film or video production certificate” in subsection (1) are satisfied. For greater certainty, these guidelines are not statutory instruments as defined in the *Statutory Instruments Act*.

(13) Subsections (1) and (10) apply

(a) to taxation years that end after November 14, 2003; and

(b) in respect of a film or video production in respect of which a corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsection 125.4(3) of the Act in respect of a labour expenditure incurred after 1997.

(14) Subsections (2) and (4) to (9) apply

(a) to film or video productions for which the production commencement time of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) is on or after November 14, 2003; and

(b) to a corporation in respect of a film or video production for which the production commencement time of any corporation is before November 14, 2003

(i) if the earliest labour expenditure of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) in respect of the production is made after 2003, or

(ii) if the corporation elects (or, if there is more than one qualified corporation in respect of the production, all such corporations jointly elect), in writing, and the election is filed with the Minister of National Revenue on or before the earliest filing-due date of any qualified corporation in respect of the production for that corporation's taxation year that includes the day on which this Act is assented to, and the earliest labour expenditure of all such qualified corporations in respect of the production is made

(A) after the last taxation year of any such corporation that ended before November 14, 2003, or

(B) if the first taxation year of all such corporations includes November 14, 2003, in that taxation year.

(15) The earliest labour expenditure referred to in subsection (14) is to be determined under the provisions of subsection 125.4(1) or (2) of the Act that would apply if the following provisions were not enacted:

(a) the definitions "assistance" and "salary or wages" in subsection 125.4(1) of the Act, as enacted by subsection (2);

(b) the portion of the definition "labour expenditure" in subsection 125.4(1) of the Act, as enacted by subsection (4);

(c) the portions of the definition "qualified labour expenditure" in subsection 125.4(1) of the Act, as enacted, respectively, by subsections (5) and (6);

(d) the definitions "production commencement time" and "script material" in subsection 125.4(1) of the Act, as enacted by subsection (7);

(e) the portion of subsection 125.4(2) of the Act, as enacted by subsection (8); and

(f) paragraph 125.4(2)(d) of the Act, as enacted by subsection (9).

(16) Subsection (3) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that, in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the definition "Canadian

film or video production certificate” in subsection 125.4(1) of the Act, as enacted by subsection (3), is to be read as follows:

“Canadian film or video production certificate” means a certificate issued in respect of a production by the Minister of Canadian Heritage

(a) certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(i) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(A) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(B) a prescribed taxable Canadian corporation related to the qualified corporation, or

(C) any combination of corporations described in clause (A) or (B), and

(ii) public financial support of the production would not be contrary to public policy; and

(b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

(17) Subsection (11) applies after November 14, 2003.

(18) Subsection (12) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that, in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the reference to “paragraphs (a) and (b)” in subsection 125.4(7) of the Act, as enacted by subsection (12), is to be read as a reference to “subparagraphs (a)(i) and (ii)”.

120. (1) The portion of subsection 126(2.22) of the French version of the Act before paragraph (a) is replaced by the following:

(2.22) Lorsqu’un particulier non-résident dispose, au cours d’une année d’imposition donnée, d’un bien qu’il a acquis la dernière fois à un moment (appelé « moment de l’acquisition » au présent paragraphe) à l’occasion d’une distribution effectuée après le 1^{er} octobre 1996 et à laquelle les alinéas 107(2)a) à c) ne s’appliquent pas par le seul effet du paragraphe 107(5), la fiducie peut déduire de son impôt payable par ailleurs en vertu de la présente partie pour l’année (appelée « année de la distribution » au présent paragraphe) qui comprend le moment de l’acquisition un montant ne dépassant pas le moins élevé des montants suivants :

(2) The portion of paragraph 126(2.22)(a) of the French version of the Act after subparagraph (ii) and before subparagraph (iii) is replaced by the following:

s'il est raisonnable de considérer que le montant a été payé sur la partie de tout gain ou bénéfice tiré de la disposition du bien qui s'est accumulée avant la distribution et après le dernier en date des moments suivants, antérieur à la distribution :

(3) Subparagraphs 126(2.22)(b)(i) and (ii) of the French version of the Act are replaced by the following:

(i) le montant d'impôt en vertu de la présente partie qui était payable par ailleurs par la fiducie pour l'année de la distribution, compte tenu de l'application du présent paragraphe aux dispositions effectuées avant le moment de la disposition,

(ii) le montant de cet impôt qui aurait été payable par la fiducie pour l'année de la distribution si le bien n'avait pas été distribué au particulier.

(4) Paragraph 126(4.4)(a) of the Act is replaced by the following:

(a) a disposition or acquisition of property deemed to be made by subsection 10(12) or (13), 14(14) or (15) or 45(1), section 70, 128.1 or 132.2, subsections 138(11.3) or 142.5(2), paragraph 142.6(1)(b), or subsections 142.6(1.1) or (1.2) or 149(10) is not a disposition or acquisition, as the case may be; and

(5) Subsection 126(6) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) if, in computing a taxpayer's income for a taxation year from a business carried on by the taxpayer in Canada, an amount is included in respect of interest paid or payable to the taxpayer by a person resident in a country other than Canada, and the taxpayer has paid to the government of that other country a non-business income tax for the year with respect to the amount, the amount is, in applying the definition “qualifying incomes” for the purpose of subsection (1), deemed to be income from a source in that other country.

(6) Subsection (4) applies to dispositions and acquisitions that occur after 1998, except that, in applying paragraph 126(4.4)(a) of the Act, as enacted by subsection (4), to dispositions and acquisitions that occur before June 28, 1999, that paragraph is to be read without reference to “10(12) or (13), 14(14) or (15), or”.

(7) Subsection (5) applies to amounts received after February 27, 2004.

121. (1) Section 126.1 of the Act is repealed.

(2) Subsection (1) applies in respect of forms filed after March 20, 2003.

122. (1) Paragraphs 127(1)(a) and (b) of the French version of the Act are replaced by the following:

a) les 2/3 de tout impôt sur les opérations forestières, payé par le contribuable au gouvernement d'une province sur le revenu pour l'année tiré d'opérations forestières dans cette province;

b) le quinzième du revenu du contribuable pour l'année, tiré d'opérations forestières dans la province, dont fait mention l'alinéa a).

(2) The definition “revenu pour l’année tiré des opérations forestières dans la province” in subsection 127(2) of the French version of the Act is repealed.

(3) The definition “impôt sur les opérations forestières” in subsection 127(2) of the French version of the Act is replaced by the following:

« impôt sur les opérations forestières »
“logging tax”

« impôt sur les opérations forestières » Impôt levé par la législature d’une province et qui est, par règlement, déclaré être un impôt d’application générale sur le revenu tiré d’opérations forestières.

(4) Subsection 127(2) of the French version of the Act is amended by adding the following in alphabetical order:

« revenu pour l’année tiré d’opérations forestières dans la province »
“income for the year from logging operations in the province”

« revenu pour l’année tiré d’opérations forestières dans la province » S’entend au sens du règlement.

(5) The portion of subsection 127(3) of the Act before paragraph (a) is replaced by the following:

Contributions to registered parties and candidates

(3) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is the eligible amount, of a monetary contribution referred to in the *Canada Elections Act*, made by the taxpayer in the year to a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in that Act,

(6) Subsection 127(4.2) of the Act is replaced by the following:

Allocation of amount contributed among partners

(4.2) If at the end of a fiscal period of a partnership a taxpayer is a member of the partnership, the taxpayer’s share of the total that would, if the partnership were a person and its fiscal period were its taxation year, be the total referred to in subsection (3) in respect of the partnership for that taxation year is deemed for the purpose of that subsection to be a monetary contribution made by the taxpayer in the taxpayer’s taxation year in which the fiscal period of the partnership ends.

(7) Paragraphs 127(27)(b) and (c) of the Act are replaced by the following:

(b) the cost, or a portion of the cost, of the particular property was a qualified expenditure, or would if this Act were read without reference to subsection (26) be a qualified expenditure, to the taxpayer,

(c) the cost, or the portion of the cost, of the particular property is included, or would if this Act were read without reference to subsection (26) be included, in an amount, a percentage of which can reasonably be considered to be included in computing the taxpayer’s investment tax credit at the end of the taxation year, and

(8) The portion of subsection 127(27) of the Act after paragraph (d) is replaced by the following:

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(e) the amount that can reasonably be considered to be included in the taxpayer's investment tax credit at the end of any taxation year, or that would be so included if this Act were read without reference to subsection (26), in respect of the particular property, and

(f) the amount that is the percentage — that is the sum of each percentage described in paragraph (c) that has been applied to compute the taxpayer's investment tax credit in respect of the particular property — of

(i) in the case where the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer,

(A) the proceeds of disposition of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the proceeds of disposition of the property, if the property is the particular property, is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the proceeds of disposition of the property, if the property is the particular property and is second term shared-use equipment, and

(ii) in the case where the particular property or the other property is converted to commercial use or is disposed of to a person who does not deal at arm's length with the taxpayer,

(A) the fair market value of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the fair market value of the property at the time of its conversion or disposition, if the particular property is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the fair market of the property at the time of its conversion or disposition, if the particular property is second term shared-use equipment.

(9) Subsections (5) and (6) apply to monetary contributions made after December 20, 2002, except that, for monetary contributions made before 2004, the reference to "to a registered party, a provincial division of a registered party, a registered associa-

tion or a candidate” in subsection 127(3) of the Act, as enacted by subsection (5), is to be read as a reference to “to a registered party or a candidate”.

(10) Subsections (7) and (8) apply to dispositions and conversions that occur after December 20, 2002.

123. (1) Paragraph (b) of the definition “approved share” in subsection 127.4(1) of the Act is replaced by the following:

(b) a share issued by a prescribed labour-sponsored venture capital corporation that is not a registered labour-sponsored venture capital corporation if, at the time of the issue, no province under the laws (described in section 6701 of the *Income Tax Regulations*) of which the corporation is registered or established provides assistance in respect of the acquisition of the share;

(2) Paragraphs (a) and (b) of the definition “qualifying trust” in subsection 127.4(1) of the English version of the Act are replaced by the following:

(a) a trust governed by a registered retirement savings plan, under which the individual is the annuitant, that is not a spousal or common-law partner plan (in this definition having the meaning assigned by subsection 146(1)) in relation to another individual, or

(b) a trust governed by a registered retirement savings plan, under which the individual or the individual’s spouse or common-law partner is the annuitant, that is a spousal or common-law partner plan in relation to the individual or the individual’s spouse or common-law partner, if the individual and no other person claims a deduction under subsection (2) in respect of the share;

(3) Subsection (1) applies to acquisitions of shares that occur after 2003.

(4) Subsection (2) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (2) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

124. (1) Paragraph 127.52(1)(d) of the Act is amended by striking out the word “and” at the end of subparagraph (i), by adding the word “and” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) this Act were read without reference to subsection 104(21.6);

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

125. (1) Section 127.531 of the Act is replaced by the following:

127.531 An individual’s basic minimum tax credit for a taxation year is the total of all amounts each of which is

(a) an amount deducted under subsection 118(1) or (2) or 118.3(1) or any of sections 118.5 to 118.7 in computing the individual’s tax payable for the year under this Part; or

(b) the amount that was claimed under section 118.1 or 118.2 in computing the individual's tax payable for the year under this Part, determined without reference to this Division, to the extent that the amount claimed does not exceed the maximum amount deductible under that section in computing the individual's tax payable for the year under this Part, determined without reference to this Division.

(2) Subsection (1) applies to the 2002 and subsequent taxation years.

126. (1) Paragraph 128.1(7)(b) of the French version of the Act is replaced by the following:

b) est propriétaire, à ce moment, d'un bien qu'il a acquis, la dernière fois, à l'occasion d'une distribution à laquelle le paragraphe 107(2) se serait appliqué, n'eût été le paragraphe 107(5), effectuée par une fiducie à un moment (appelé « moment de la distribution » au présent paragraphe) postérieur au 1^{er} octobre 1996 et antérieur au moment donné;

(2) Paragraph 128.1(7)(d) of the French version of the Act is replaced by the following:

d) sous réserve des alinéas e) et f), si le particulier et la fiducie en font conjointement le choix dans un document présenté au ministre au plus tard à la première en date des dates d'échéance de production qui leur est applicable pour leur année d'imposition qui comprend le moment donné, le paragraphe 107(2.1) ne s'applique pas à la distribution pour ce qui est des biens que le particulier a acquis à l'occasion de la distribution et qui étaient des biens canadiens imposables lui appartenant tout au long de la période ayant commencé au moment de la distribution et se terminant au moment donné;

(3) Subparagraph 128.1(7)(e)(i) of the French version of the Act is replaced by the following:

(i) il résidait au Canada au moment de la distribution,

(4) Subparagraphs 128.1(7)(f)(i) and (ii) of the French version of the Act are replaced by the following:

(i) malgré l'alinéa 107(2.1)a), la fiducie est réputée avoir disposé du bien au moment de la distribution pour un produit de disposition égal au total des montants suivants :

(A) le coût indiqué du bien pour elle immédiatement avant ce moment,

(B) l'excédent éventuel du montant de la réduction prévue au paragraphe 40(3.7) et dont il est question à l'alinéa e), sur le moins élevé des montants suivants :

(I) le coût indiqué du bien pour la fiducie immédiatement avant le moment de la distribution,

(II) le montant que le particulier et la fiducie ont indiqué conjointement pour l'application du présent alinéa dans le document concernant le choix prévu à l'alinéa d) relativement au bien,

(ii) malgré l'alinéa 107(2.1)*b*), le particulier est réputé avoir acquis le bien au moment de la distribution à un coût égal à l'excédent éventuel du montant déterminé par ailleurs selon l'alinéa 107(2)*b*) sur le montant de la réduction prévue au paragraphe 40(3.7) et dont il est question à l'alinéa *e*), ou, s'il est moins élevé, le montant indiqué selon la subdivision (i)(B)(II);

(5) The portion of paragraph 128.1(7)(g) of the French version of the Act before subparagraph (i) is replaced by the following:

g) si le particulier et la fiducie en font conjointement le choix, dans un document présenté au ministre au plus tard à la dernière en date des dates d'échéance de production qui leur est applicable pour leur année d'imposition qui comprend le moment donné, relativement à chaque bien dont le particulier a été propriétaire tout au long de la période ayant commencé au moment de la distribution et se terminant au moment donné et dont il est réputé, par l'alinéa (1)*b*), avoir disposé du fait qu'il est devenu un résident du Canada, le produit de disposition pour la fiducie, selon l'alinéa 107(2.1)*a*), au moment de la distribution et le coût d'acquisition du bien pour le particulier au moment donné sont réputés, malgré les alinéas 107(2.1)*a*) et *b*), correspondre à ce produit et à ce coût, déterminés compte non tenu du présent alinéa, diminués du moins élevé des montants suivants :

(6) The portion of paragraph 128.1(7)(i) of the French version of the Act before subparagraph (i) is replaced by the following:

i) malgré les paragraphes 152(4) à (5), le ministre établit, pour tenir compte des choix prévus au présent paragraphe, toute cotisation concernant l'impôt payable par la fiducie ou le particulier en vertu de la présente loi pour toute année qui est antérieure à l'année comprenant le moment donné sans être antérieure à l'année comprenant le moment de la distribution; pareille cotisation est toutefois sans effet sur le calcul des montants suivants :

127. (1) Clause 129(3)(a)(ii)(C) of the Act is replaced by the following:

(C) three times the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

(2) Subsection (1) applies to the 2003 and subsequent taxation years.

128. (1) Paragraph 132(6)(c) of the Act is replaced by the following:

(c) it complied with prescribed conditions.

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

129. (1) Paragraph 132.11(1)(b) of the Act is replaced by the following:

(b) if the trust's taxation year ends on December 15 because of paragraph (a), subject to subsection (1.1), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at any earlier time that is determined under paragraph 132.2(3)(b) or subsection 142.6(1); and

(2) Paragraph 132.11(1)(c) of the French version of the Act is replaced by the following:

c) chacun de ses exercices qui soit commence dans une de ses années d'imposition se terminant le 15 décembre par l'effet de l'alinéa a), soit se termine dans une de ses années d'imposition ultérieures, doit prendre fin au plus tard à la fin de l'année où il a commencé.

(3) Subsection 132.11(4) of the Act is replaced by the following:

Amounts paid
or payable to
beneficiaries

(4) Notwithstanding subsection 104(24), for the purposes of subsections (5) and (6) and 104(6) and (13) and paragraph (i) of the definition “disposition” in subsection 248(1) each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year, is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular year and not at any other time.

(4) Subsection (1) applies after 1998, except that, in applying paragraph 132.11(1)(b) of the Act, as enacted by subsection (1), to taxation years that end before 2000, that paragraph is to be read without reference to “subject to subsection (1.1)”.

(5) Subsection (2) applies to the 1998 and subsequent taxation years.

(6) Subsection (3) applies to amounts that, after 1999, are paid or have become payable by a trust.

130. (1) Section 132.2 of the Act is replaced by the following:

132.2 (1) The following definitions apply in this section.

Definitions re
qualifying
exchange of
mutual funds

“first
post-exchange
year”
« première
année suivant
l'échange »

“first post-exchange year”, of a fund in respect of a qualifying exchange, means the taxation year of the fund that begins immediately after the acquisition time.

“qualifying
exchange”
« échange
admissible »

“qualifying exchange” means a transfer at any time (in this section referred to as the “transfer time”) of all or substantially all of the property of a mutual fund corporation or a mutual fund trust to a mutual fund trust (in this section referred to as the “transferor” and “transferee”, respectively, and as the “funds”) if

(a) all or substantially all of the shares issued by the transferor and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor;

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee; and

(c) the funds jointly elect, by filing a prescribed form with the Minister on or before the election's due date.

"share"
« action »

"share" means a share of the capital stock of a mutual fund corporation and a unit of a mutual fund trust.

Timing

(2) In respect of a qualifying exchange, a time referred to in the following list immediately follows the time that precedes it in the list

- (a) the transfer time;
- (b) the first intervening time;
- (c) the acquisition time;
- (d) the beginning of the funds' first post-exchange years;
- (e) the depreciables disposition time;
- (f) the second intervening time; and
- (g) the depreciables acquisition time.

General

(3) In respect of a qualifying exchange,

(a) each property of a fund, other than property disposed of by the transferor to the transferee at the transfer time and depreciable property, is deemed to have been disposed of, and to have been reacquired by the fund, at the first intervening time, for an amount equal to the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greater of

(A) its cost amount, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(b) subject to paragraph (1), the last taxation years of the funds that began before the transfer time are deemed to have ended at the acquisition time, and their first post-exchange years are deemed to have begun immediately after those last taxation years ended;

(c) each depreciable property of a fund (other than property to which subsection (5) applies and property to which paragraph (d) would, if this Act were read without reference to this paragraph, apply) is deemed to have been disposed of, and to have been reacquired, by the fund at the second intervening time for an amount equal to the lesser of

(i) the fair market value of the property at the depreciables disposition time, and

(ii) the greater of

(A) the lesser of its capital cost and its cost amount to the disposing fund at the depreciables disposition time, and

- (B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;
- (d) if at the second intervening time the undepreciated capital cost to a fund of depreciable property of a prescribed class exceeds the fair market value of all the property of that class, the excess is to be deducted in computing the fund's income for the taxation year that includes the transfer time and is deemed to have been allowed in respect of property of that class under regulations made for the purpose of paragraph 20(1)(a);
- (e) except as provided in paragraph (m), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be
 - (i) nil, if the particular property is a unit of the transferee, and
 - (ii) the particular property's fair market value at the transfer time, in any other case;
- (f) the transferor's proceeds of disposition of any units of the transferee that were disposed of by the transferor at any particular time that is within 60 days after the day that includes the transfer time in exchange for shares of the transferor, are deemed to be equal to the cost amount of the units to the transferor immediately before the particular time;
- (g) if, at any particular time that is within 60 days after the day that includes the transfer time, a taxpayer disposes of shares of the transferor to the transferor in exchange for units of the transferee
 - (i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the particular time,
 - (ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purpose of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor,
 - (iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor, and
 - (iv) where the taxpayer is at the particular time affiliated with one or both of the funds,
 - (A) those units are deemed not to be identical to any other units of the transferee,
 - (B) if the taxpayer is the transferee, and the units cease to exist when the taxpayer acquires them (or, for greater certainty, when the taxpayer would but for that cessation have acquired them), the taxpayer is deemed
 - (I) to have acquired those units at the particular time, and
 - (II) to have disposed of those units immediately after the particular time for proceeds of disposition equal to the cost amount to the taxpayer of those units at the particular time, and

(C) in any other case, for the purpose of computing any gain or loss of the taxpayer from the taxpayer's first disposition, after the particular time, of each of those units,

(I) if that disposition is a renunciation or surrender of the unit by the taxpayer for no consideration, and is not in favour of any person other than the transferee, the taxpayer's proceeds of disposition of that unit are deemed to be equal to that unit's cost amount to the taxpayer immediately before that disposition, and

(II) if subclause (I) does not apply, the taxpayer's proceeds of disposition of that unit are deemed to be equal to the greater of that unit's fair market value and its cost amount to the taxpayer immediately before that disposition;

(h) where a share to which paragraph (g) applies would, if this Act were read without reference to this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the day that includes the transfer time and the time at which it is disposed of in accordance with paragraph (g);

(i) there shall be added to the amount determined under the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the transferee for its taxation years that begin after the transfer time the amount, if any, by which

(i) the transferor's refundable capital gains tax on hand (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time

exceeds

(ii) the transferor's capital gains refund (within the meaning assigned by paragraph 131(2)(a) or 132(1)(a), as the case may be) for that year;

(j) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing the taxable income of either of the funds for a taxation year that begins after the transfer time;

(k) if the transferor is a mutual fund trust, for the purposes of subsections 132.1(1) and (3) to (5), the transferee is deemed after the transfer time to be the same mutual fund trust as, and a continuation of, the transferor;

(l) if the transferor is a mutual fund corporation

(i) for the purpose of subsection 131(4) but, for greater certainty, without having any effect on the computation of any amount determined under this Part, the transferor is deemed in respect of any share disposed of in accordance with paragraph (g) to be a mutual fund corporation at the time of the disposition, and

(ii) for the purpose of Part I.3 but, for greater certainty, without having any effect on the computation of any amount determined under this Part, the transferor's taxation

year that, if this Act were read without reference to this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time;

(*m*) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4), as the case may be), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(*n*) except as provided in subparagraph (*l*)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

Qualifying
exchange —
non-depreciable
property

(4) If a transferor transfers a property, other than a depreciable property, to a transferee in a qualifying exchange

(*a*) the transferee is deemed to have acquired the property at the acquisition time and not to have acquired the property at the transfer time; and

(*b*) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the cost amount to the transferor of the property at the transfer time,

(B) the amount that the funds agree on in respect of the property in their election, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property.

Depreciable
property

(5) If a transferor transfers a depreciable property to a transferee in a qualifying exchange,

(*a*) the transferor is deemed to have disposed of the property at the depreciables disposition time, and not to have disposed of the property at the transfer time;

(*b*) the transferee is deemed to have acquired the property at the depreciables acquisition time, and not to have acquired the property at the transfer time;

(*c*) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

	<ul style="list-style-type: none"> (i) the fair market value of the property at the transfer time, and (ii) the greatest of <ul style="list-style-type: none"> (A) the lesser of its capital cost and its cost amount to the transferor immediately before the depreciables disposition time, (B) the amount that the funds agree on in respect of the property in their election, and (C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property; (d) where the capital cost of the property to the transferor exceeds the transferor's proceeds of disposition of the property under paragraph (c), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), <ul style="list-style-type: none"> (i) the property's capital cost to the transferee is deemed to be the amount that was its capital cost to the transferor, and (ii) the excess is deemed to have been allowed to the transferee in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years ending before the transfer time; and (e) where two or more depreciable properties of a prescribed class are disposed of by the transferor to the transferee in the same qualifying exchange, paragraph (c) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor at the time of making the election in respect of the qualifying exchange or, if the transferor does not so designate any such order, in the order designated by the Minister.
Due date	<p>(6) The due date of an election referred to in paragraph (c) of the definition "qualifying exchange" in subsection (1) is</p> <ul style="list-style-type: none"> (a) the day that is 6 months after the day that includes the transfer time; and (b) on joint application by the funds, any later day that the Minister accepts.
Amendment or Revocation of Election	<p>(7) The Minister may, on joint application by the funds on or before the due date of an election referred to in paragraph (c) of the definition "qualifying exchange" in subsection (1), grant permission to amend or revoke the election.</p> <p>(2) The definitions "first post-exchange year" and "share" in subsection 132.2(1), and subsections 132.2(2) to (5), of the Act, as enacted by subsection (1), apply to qualifying exchanges that occur after 1998 except that if a qualifying exchange occurred before ANNOUNCEMENT DATE and the transferee has before ANNOUNCEMENT DATE filed a return of income, for any taxation year, that identified the realization of any loss that would not have been realized if paragraphs 132.2(3)(f) and (g) of the Act, as enacted by subsection (1), had applied in respect of the qualifying exchange, those paragraphs shall be read in their application to the qualifying exchange as follows:</p> <ul style="list-style-type: none"> (f) the transferor's proceeds of disposition of any units of the transferee that were received by the transferor as consideration for the disposition of the property, and that were dis-

posed of by the transferor within 60 days after the day that includes the transfer time in exchange for shares of the transferor, are deemed to be nil;

(g) if, within 60 days after the day that includes the transfer time, a taxpayer disposes of shares of the transferor to the transferor in exchange for units of the transferee

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purpose of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

(3) For qualifying exchanges that occurred after June 1994 and before 1999, paragraph 132.2(1)(j) of the Act is to be read as follows:

(j) where shares of the transferor have been disposed of by a taxpayer to the transferor in exchange for units of the transferee within 60 days after the transfer time,

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) if all of the taxpayer's shares of the transferor have been so disposed of, for the purposes of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

(4) The definition "qualifying exchange" in subsection 132.2(1), and subsections 132.2(6) and (7), of the Act, as enacted by subsection (1), apply to qualifying exchanges that occur after June 1994.

(5) If a valid election referred to in paragraph (c) of the definition "qualifying exchange" in subsection 132.2(2) of the Act was made, the election continues to have the effect of having section 132.2 of the Act, as modified from time to time, apply to the transfer.

(6) If a valid election referred to in subsection 159(4) of the *Income Tax Amendments Act*, 1997 was made in respect of a qualifying exchange to read subsection 132.2(1) of the *Income Tax Act* without reference to paragraph 132.2(1)(p) of that Act, the election is, on the application of subsection (1), deemed to have the effect of reading subsection 132.2(3) of the Act, as enacted by subsection (1), in respect of the qualifying exchange without reference to paragraph 132.2(3)(i).

131. (1) Subsection 134.1(2) of the Act is replaced by the following:

Application

(2) For the purposes of applying subsections 104(10) and (11) and 133(6) to (9) (other than the definition “non-resident-owned investment corporation” in subsection 133(8)), section 212 and any tax treaty, a corporation described in subsection (1) is deemed to be a non-resident-owned investment corporation in its first non-NRO year in respect of dividends paid in that year on shares of its capital stock to a non-resident person, to a trust for the benefit of non-resident persons or their unborn issue or to a non-resident-owned investment corporation.

(2) Subsection (1) applies to a corporation that ceases to be a non-resident-owned investment corporation because of a transaction or an event that occurs, or a circumstance that arises, in a taxation year of the corporation that ends after February 27, 2000.

132. (1) Subsection 136(1) of the Act is replaced by the following:

Cooperative
not private
corporation

136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, if this Act were read without reference to this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 123.4, 125, 125.1, 127, 127.1, 152 and 157, the definition “mark-to-market property” in subsection 142.2(1) and the definition “small business corporation” in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

(2) Subsection 136(2) of the Act is amended by striking out the word “and” at the end of paragraph (b) and by replacing paragraph (c) with the following:

(c) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming; and

(d) at least 90% of its shares, if any, are held by members described in paragraph (c) or by trusts governed by registered retirement savings plans, registered retirement income funds or registered education savings plans, the annuitants or subscribers under which are members described in that paragraph.

(3) Subsection (1) applies to the 2001 and subsequent taxation years.

(4) Subsection (2) applies to the 1998 and subsequent taxation years.

133. (1) The definition “member” in subsection 137(6) of the Act is replaced by the following:

“member”
« membre »

“member”, of a credit union, means

(a) a person who is recorded as a member on the records of the credit union and is entitled to participate in and use the services of the credit union, and

(b) a registered retirement savings plan, a registered retirement income fund or a registered education savings plan, the annuitant or subscriber under which is a person described in paragraph (a).

(2) Subsection 137(7) of the Act is replaced by the following:

Credit union
not private
corporation

(7) Notwithstanding any other provision of this Act, a credit union that would, if this Act were read without reference to this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 123.1, 123.4, 125, 127, 127.1, 152 and 157 and the definition “small business corporation” in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

(3) Subsection (1) applies to the 1996 and subsequent taxation years.

(4) Subsection (2) applies to the 2001 and subsequent taxation years.

134. (1) Subsection 137.1(2) of the Act is replaced by the following:

Amounts not
included in
income

(2) The following amounts shall not be included in computing the income of a deposit insurance corporation for a taxation year:

(a) any premium or assessment received, or receivable, by the corporation in the year from a member institution; and

(b) any amount received by the corporation in the year from another deposit insurance corporation to the extent that that amount can reasonably be considered to have been paid out of amounts referred to in paragraph (a) received by that other deposit insurance corporation in any taxation year.

(2) Subsection 137.1(4) of the Act is amended by striking out the word “or” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) any amount paid by it to another deposit insurance corporation that is, because of paragraph (2)(b), not included in computing the income of that other deposit insurance corporation; or

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

135. (1) Subsection 138(2) of the Act is replaced by the following:

(2) Notwithstanding any other provision of this Act,

Insurer's
income or loss

(a) if a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year, its income or loss for the year from carrying on an insurance business is the amount of its income or loss for the taxation year from carrying on the insurance business in Canada;

(b) if a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year, for greater certainty,

(i) in computing the insurer's income or loss for the taxation year from the insurance business carried on by it in Canada, no amount is to be included in respect of the insurer's gross investment revenue for the taxation year derived from property used or held by it in the course of carrying on an insurance business that is not designated insurance property for the taxation year of the insurer, and

(ii) in computing the insurer's taxable capital gains or allowable capital losses for the taxation year from dispositions of capital property (referred to in this subparagraph as

“insurance business property”) that, at the time of the disposition, was used or held by the insurer in the course of carrying on an insurance business,

(A) there is to be included each taxable capital gain or allowable capital loss of the insurer for the taxation year from a disposition in the taxation year of an insurance business property that was a designated insurance property for the taxation year of the insurer, and

(B) there is not to be included any taxable capital gain or allowable capital loss of the insurer for the taxation year from a disposition in the taxation year of an insurance business property that was not a designated insurance property for the taxation year of the insurer;

(c) if a non-resident insurer carries on an insurance business in Canada in a taxation year, its income or loss for the taxation year from carrying on an insurance business is the amount of its income or loss for the taxation year from carrying on the insurance business in Canada; and

(d) if a non-resident insurer carries on an insurance business in Canada in a taxation year,

(i) in computing the non-resident insurer’s income or loss for the taxation year from the insurance business carried on by it in Canada, no amount is to be included in respect of the non-resident insurer’s gross investment revenue for the taxation year derived from property used or held by it in the course of carrying on an insurance business that is not designated insurance property for the taxation year of the non-resident insurer, and

(ii) in computing the non-resident insurer’s taxable capital gains or allowable capital losses for the taxation year from dispositions of capital property (referred to in this subparagraph as “insurance business property”) that, at the time of the disposition, was used or held by the non-resident insurer in the course of carrying on an insurance business,

(A) there is to be included each taxable capital gain or allowable capital loss of the non-resident insurer for the taxation year from a disposition in the taxation year of an insurance business property that was a designated insurance property for the taxation year of the non-resident insurer, and

(B) there is not to be included any taxable capital gain or allowable capital loss of the non-resident insurer for the taxation year from a disposition in the taxation year of an insurance business property that was not a designated insurance property for the taxation year of the non-resident insurer.

(2) Paragraph 138(11.91)(d) of the French version of the Act is repealed.

(3) Subsection 138(11.91) of the English version of the Act is amended by adding the word “and” at the end of paragraph (d.1), by striking out the word “and” at the end of paragraph (e) and by repealing paragraph (f).

(4) Subsections (1) to (3) apply to taxation years that end after 1999.

136. (1) Paragraph 142.6(1)(b) of the Act is replaced by the following:

(b) if the taxpayer becomes a financial institution, the taxpayer is deemed to have disposed, immediately before the end of its particular taxation year that ends immediately before the particular time, of each of the following properties held by the taxpayer for proceeds equal to the property's fair market value at the time of that disposition:

(i) a specified debt obligation, or

(ii) a mark-to-market property of the taxpayer for the particular taxation year or for the taxpayer's taxation year that includes the particular time;

(2) Paragraph 142.6(1)(d) of the Act is replaced by the following:

(d) the taxpayer is deemed to have reacquired, at the end of its taxation year that ends immediately before the particular time, each property deemed by paragraph (b) or (c) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

(3) Subsections (1) and (2) apply to taxation years that end after 1998.

137. (1) Subsection 142.7(8) of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) for the purpose of applying subparagraph 212(1)(b)(vii) in respect of the debt obligation, the obligation is deemed to have been issued by the entrant bank at the time that the obligation was issued by the Canadian affiliate.

(2) Subsection (1) applies after June 27, 1999.

138. (1) The portion of subsection 143(3.1) of the Act before the description of B in paragraph (b) is replaced by the following:

(3.1) For the purposes of section 118.1, if the eligible amount of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) in respect of a congregation would, but for this subsection, be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(a) the trust is deemed not to have made the gift; and

(b) each participating member of the congregation is deemed to have made, in the year, such a gift the eligible amount of which is the amount determined by the formula

$$A \times B/C$$

where

A is the eligible amount of the gift made by the trust,

(2) Subsection (1) applies to gifts made after December 20, 2002.

139. (1) The heading before section 143.2 of the Act is replaced by the following:

Cost of Tax Shelter Investments and Limited-recourse Debt in Respect of Gifting Arrangements

(2) Section 143.2 of the Act is amended by adding the following after subsection (6):

(6.1) The limited-recourse debt in respect of a gift or monetary contribution of a taxpayer, at the time the gift or monetary contribution is made, is the total of

(a) each limited-recourse amount at that time, of the taxpayer and of all other taxpayers not dealing at arm's length with the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution,

(b) each limited-recourse amount at that time, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution, and

(c) each amount that is the unpaid amount at that time of any other indebtedness, of any taxpayer referred to in paragraph (a) or (b), that can reasonably be considered to relate to the gift or monetary contribution if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness.

(3) The portion of subsection 143.2(13) of the Act before paragraph (a) is replaced by the following:

(13) For the purpose of this section, if can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure, gift or monetary contribution is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness relating to the taxpayer's expenditure, gift or monetary contribution is deemed to be a limited-recourse amount relating to the expenditure, gift or monetary contribution unless

(4) Subsections (1) to (3) apply in respect of expenditures, gifts and monetary contributions made after February 18, 2003.

140. (1) Paragraph (b) of the definition "earned income" in subsection 146(1) of the Act is replaced by the following:

(b) an amount included under paragraph 56(1)(b), (c.1), (c.2), (g) or (o) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada,

(2) Paragraph (d) of the definition "revenu gagné" in subsection 146(1) of the French version of the Act is replaced by the following:

d) soit, dans le cas d'un contribuable visé au paragraphe 115(2), le total qui serait calculé en application de l'alinéa 115(2)e) à son égard pour l'année compte non tenu du renvoi à l'alinéa 56(1)n) au sous-alinéa 115(2)e)(ii), ni du sous-alinéa 115(2)e)(iv), à l'exception de toute partie de ce total qui est incluse, en application de l'alinéa c), dans le total calculé

Limited-re-
course debt in
respect of a gift
or monetary
contribution

Information
located outside
Canada

selon la présente définition ou qui est exonérée de l'impôt sur le revenu au Canada par l'effet d'une disposition d'un accord ou convention fiscal conclu avec un autre pays et ayant force de loi au Canada,

(3) Subparagraph (d)(i) of the definition “earned income” in subsection 146(1) of the English version of the Act is replaced by the following:

(i) that paragraph were read without reference to subparagraph 115(2)(e)(iv), and

(4) Paragraph (f) of the definition “earned income” in subsection 146(1) of the Act is replaced by the following:

(f) an amount deductible under paragraph 60(b) or (c.1), or deducted under paragraph 60(c.2), in computing the taxpayer's income for the year,

(5) Paragraph (h) of the definition “earned income” in subsection 146(1) of the Act is replaced by the following:

(h) the portion of an amount included under subparagraph (a)(ii) or (c)(ii) in determining the taxpayer's earned income for the year because of paragraph 14(1)(b)

(6) Subsection 146(8.1) of the Act is replaced by the following:

(8.1) Where a payment out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative would have been a refund of premiums if it had been paid under the plan to an individual who is a beneficiary (as defined in subsection 108(1)) under the deceased's estate, the payment is, to the extent it is so designated jointly by the legal representative and the individual in prescribed form filed with the Minister, deemed to be received by the individual (and not by the legal representative) at the time it was so paid as a benefit that is a refund of premiums.

(7) Subparagraph 146(10.1)(b)(ii) of the Act is replaced by the following:

(ii) paragraphs 38(a) and (b) are to be read as if the fraction set out in each of those paragraphs were replaced by the word “all”.

(8) Subsections (1) and (4) apply to the 1997 and subsequent taxation years.

(9) Subsections (2) and (3) apply to the 1993 and subsequent taxation years.

(10) Subsection (5) applies to amounts included in computing income for taxation years in respect of business fiscal periods that end after February 27, 2000.

(11) Subsection (6) applies after 1988 except that, before 1999, subsection 146(8.1) of the Act, as enacted by subsection (6), is to be read as follows:

(8.1) Such portion of an amount paid in a taxation year out of or under a registered retirement savings plan of a deceased annuitant to the annuitant's legal representative as, had that portion been paid under the plan to an individual who is a beneficiary (as defined in subsection 108(1)) under the deceased's estate, would have been a refund of premiums is, to the extent it is so designated jointly by the legal representative and the individual in

Deemed
receipt of
refund of
premiums

prescribed form filed with the Minister, deemed to be received by the individual in the year as a benefit that is a refund of premiums.

141. (1) The definition “quarter” in subsection 146.01(1) of the Act is repealed.

(2) Subsection 146.01(8) of the Act is repealed.

(3) Subsections (1) and (2) apply in respect of the 2002 and subsequent taxation years.

142. (1) Subsection 146.1(2) of the Act is amended by adding the following after paragraph (g.2):

(g.3) the plan provides that an individual is permitted to be designated as a beneficiary under the plan, and that a contribution to the plan in respect of an individual who is a beneficiary under the plan is permitted to be made, only if

(i) in the case of a designation, the individual’s Social Insurance Number is provided to the promoter before the designation is made and either

(A) the individual is resident in Canada when the designation is made, or

(B) the designation is made in conjunction with a transfer of property into the plan from another registered education savings plan under which the individual was a beneficiary immediately before the transfer, and

(ii) in the case of a contribution, either

(A) the individual’s Social Insurance Number is provided to the promoter before the contribution is made and the individual is resident in Canada when the contribution is made, or

(B) the contribution is made by way of transfer from another registered education savings plan under which the individual was a beneficiary immediately before the transfer;

(2) Section 146.1 of the Act is amended by adding the following after subsection (2.2):

(2.3) Notwithstanding paragraph (2)(g.3), an education savings plan may provide that an individual’s Social Insurance Number need not be provided in respect of

(a) a contribution to the plan, if the plan was entered into before 1999; and

(b) a designation of a non-resident individual as a beneficiary under the plan, if the individual was not assigned a Social Insurance Number before the designation is made.

(3) Subsections (1) and (2) apply after 2003.

143. (1) Paragraph (b) of the definition “annuitant” in subsection 146.3(1) of the Act is replaced by the following:

(b) after the death of the first individual, a spouse or common-law partner (in this definition referred to as the “survivor”) of the first individual to whom the carrier has

undertaken to make payments described in the definition “retirement income fund” out of or under the fund after the death of the first individual, if the survivor is alive at that time and the undertaking was made

(i) pursuant to an election that is described in that definition and that was made by the first individual, or

(ii) with the consent of the legal representative of the first individual, and

(2) The portion of paragraph 146.3(2)(c) of the English version of the Act before subparagraph (i) is replaced by the following:

(c) if the carrier is a person referred to as a depositary in section 146, the fund provides that

(3) Paragraph 146.3(2)(f) of the Act is amended by striking out the word “or” at the end of subparagraph (vi), by adding the word “or” at the end of subparagraph (vii) and by adding the following after subparagraph (vii):

(viii) a deferred profit sharing plan in accordance with subsection 147(19);

(4) The portion of subsection 146.3(5.1) of the English version of the Act before paragraph (a) is replaced by the following:

(5.1) If at any time in a taxation year a particular amount in respect of a registered retirement income fund that is a spousal or common-law partner plan (within the meaning assigned by subsection 146(1)) in relation to a taxpayer is required to be included in the income of the taxpayer’s spouse or common-law partner and the taxpayer is not living separate and apart from the taxpayer’s spouse or common-law partner at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that time in computing the taxpayer’s income for the year an amount equal to the least of

(5) The portion of subsection 146.3(9) of the Act before paragraph (a) is replaced by the following:

(9) If a trust that is governed by a registered retirement income fund holds, at any time in a taxation year, a property that is not a qualified investment,

(6) Subparagraph 146.3(9)(b)(ii) of the Act is replaced by the following:

(ii) paragraphs 38(a) and (b) are to be read as if the fraction set out in each of those paragraphs were replaced by the word “all”.

(7) Subsections (1) and (4) apply to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsections (1) and (4) apply to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

(8) Subsection (2) applies after 2001.

(9) Subsection (3) applies after March 20, 2003.

Amount
included in
income

Tax payable on
income from
non-qualified
investment

(10) Subsection (5) applies to the 2003 and subsequent taxation years.

144. (1) Paragraph 147(2)(e) of the Act is replaced by the following:

(e) the plan includes a provision stipulating that no right of a person under the plan is capable of any surrender or assignment other than

(i) an assignment under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between an individual and the individual's spouse or common-law partner, or former spouse or common-law partner, in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership,

(ii) an assignment by a deceased individual's legal representative on the distribution of the individual's estate, and

(iii) a surrender of benefits to avoid revocation of the plan's registration;

(2) Subsection 147(5.11) of the Act is repealed.

(3) Subparagraph 147(19)(b)(ii) of the Act is replaced by the following:

(ii) who is a spouse or common-law partner, or former spouse or common-law partner, of an employee or former employee referred to in subparagraph (i) and who is entitled to the amount

(A) as a consequence of the death of the employee or former employee, or

(B) under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between the employee or former employee and the individual in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership;

(4) The portion of paragraph 147(19)(d) of the French version of the Act before subparagraph (i) is replaced by the following:

d) le montant est transféré directement à l'un des régimes ou fonds suivants au profit du particulier :

(5) Paragraph 147(19)(d) of the Act is amended by striking out the word "or" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(6) Subsection (1) applies after March 20, 2003.

(7) Subsection (2) applies to cessations of employment that occur after 2002.

(8) Subsections (3) to (5) apply to transfers that occur after March 20, 2003.

145. (1) Paragraph 148(1)(e) of the Act is amended by striking out the word "or" at the end of subparagraph (i) and by adding the following after subparagraph (i):

(i.1) the annuity contract is a qualifying trust annuity with respect to a taxpayer and the amount paid to acquire it was deductible under paragraph 60(I) in computing the taxpayer's income, or

(2) Subsection (1) applies after August 1992.

(3) Paragraph 148(1)(e) of the Act, as it applies after 1988 and before September 1992, is to be read as follows:

(e) an annuity contract

(i) the payment for which was deductible in computing the policyholder's income by virtue of paragraph 60(I), or

(ii) that is a qualifying trust annuity with respect to a taxpayer, the payment for which was deductible under paragraph 60(I) in computing the taxpayer's income,

146. (1) The definition "versement admissible" in subsection 148.1(1) of the French version of the Act is replaced by the following:

« versement
admissible »
"relevant
contribution"

« versement admissible » Est un versement admissible effectué pour un particulier dans le cadre d'un arrangement donné :

a) le versement effectué dans le cadre de l'arrangement donné en vue du financement de services de funérailles ou de cimetière relatifs au particulier, à l'exception d'un versement effectué au moyen d'un transfert d'un arrangement de services funéraires;

b) la partie d'un versement effectué dans le cadre d'un arrangement de services funéraires (à l'exception d'un tel versement effectué au moyen d'un transfert d'un arrangement de services funéraires) qu'il est raisonnable de considérer comme ayant ultérieurement servi à effectuer un versement dans le cadre de l'arrangement donné au moyen d'un transfert d'un arrangement de services funéraires en vue du financement de services de funérailles ou de cimetière relatifs au particulier.

(2) The description of C in subsection 148.1(3) of the Act is replaced by the following:

C is the amount determined by the formula

$$D - E$$

where

D is the total of all relevant contributions made before the particular time in respect of the individual under the arrangement (other than contributions in respect of the individual that were in a cemetery care trust), and

E is the total of all amounts each of which is the amount, if any, by which

(a) an amount relating to the balance in respect of the individual under the arrangement that is deemed by subsection (4) to have been distributed before the particular time from the arrangement

exceeds

(b) the portion of the amount referred to in paragraph (a) that is added, because of this subsection, in computing a taxpayer's income.

(3) Section 148.1 of the Act is amended by adding the following after subsection (3):

Deemed
distribution on
transfer

(4) If at a particular time an amount relating to the balance in respect of an individual (referred to in this subsection and in subsection (5) as the "transferor") under an eligible funeral arrangement (referred to in this subsection and in subsection (5) as the "transferor arrangement") is transferred, credited or added to the balance in respect of the same or another individual (referred to in this subsection and in subsection (5) as the "recipient") under the same or another eligible funeral arrangement (referred to in this subsection and in subsection (5) as the "recipient arrangement"),

(a) the amount is deemed to be distributed to the transferor (or, if the transferor is deceased at the particular time, to the recipient) at the particular time from the transferor arrangement and to be paid from the balance in respect of the transferor under the transferor arrangement; and

(b) the amount is deemed to be a contribution made (other than by way of a transfer from an eligible funeral arrangement) at the particular time under the recipient arrangement for the purpose of funding funeral or cemetery services with respect to the recipient.

Non-applica-
tion of
subsection (4)

(5) Subsection (4) does not apply if

(a) the transferor and the recipient are the same individual;

(b) the amount that is transferred, credited or added to the balance in respect of the individual under the recipient arrangement is equal to the balance in respect of the individual under the transferor arrangement immediately before the particular time; and

(c) the transferor arrangement is terminated immediately after the transfer.

(4) Subsections (2) and (3) apply to amounts that are transferred, credited or added after December 20, 2002.

147. (1) Paragraph 149(1)(d.5) of the Act is replaced by the following:

Income within
boundaries of
entities

(d.5) subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;

(2) Subparagraphs 149(1)(d.6)(i) and (ii) of the Act are replaced by the following:

(i) if paragraph (d.5) applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in that paragraph in its application to that other corporation, commission or association, or

- (ii) if this paragraph applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in subparagraph (i) in its application to that other corporation, commission or association;

(3) Subsection 149(1) of the Act is amended by striking out the word “or” at the end of paragraph (y) and by adding the following after paragraph (z):

(z.1) a trust

- (i) that was created because of a requirement imposed by section 56 of the *Environment Quality Act*, R.S.Q., c. Q-2,
- (ii) that is resident in Canada, and
- (iii) in which the only persons that are beneficially interested are
 - (A) Her Majesty in right of Canada,
 - (B) Her Majesty in right of a province, or
 - (C) a municipality (as defined in section 1 of that Act) that is exempt because of this subsection from tax under this Part on all of its taxable income; or

(z.2) a trust

- (i) that was created because of a requirement imposed by subsection 9(1) of the *Nuclear Fuel Waste Act*, S.C. 2002, c. 23,
- (ii) that is resident in Canada, and
- (iii) in which the only persons that are beneficially interested are
 - (A) Her Majesty in right of Canada,
 - (B) Her Majesty in right of a province,
 - (C) a nuclear energy corporation (as defined in section 2 of that Act) all of the shares of the capital stock of which are owned by a person, or combination of persons, described in clause (A) or (B), or
 - (D) Atomic Energy of Canada Limited, being the company incorporated or acquired pursuant to subsection 10(2) of the *Atomic Energy Control Act*, R.S.C. 1970, c. A-19.

(4) The portion of subsection 149(1.2) of the Act before paragraph (b) is replaced by the following:

(1.2) For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, a commission or an association from activities carried on outside the geographical boundaries of a municipality or of a municipal or public body does not include income from activities carried on

(a) under an agreement in writing between

- (i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or of a province, a municipality, a municipal or public body or a corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or of a province, by a municipality in Canada or by a municipal or public body in Canada

within the geographical boundaries of,

(iii) if the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) if the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province,

(v) if the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality, and

(vi) if the person is a municipal or public body performing a function of government in Canada or a corporation controlled by such a body, the area described in subsection (11) in respect of the person; or

(5) Subsection 149(1.3) of the Act is replaced by the following:

(1.3) Paragraphs (1)(d) to (d.6) do not apply in respect of a person's taxable income for a period in a taxation year if at any time during the period

(a) the person is a corporation shares of the capital stock of which are owned by one or more other persons that, in total, give them more than 10% of the votes that could be cast at a meeting of shareholders of the corporation, other than shares that are owned by one or more persons each of which is

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a corporation, a commission or an association, to which any of paragraphs (1)(d) to (d.6) apply; or

(b) the person is, or would be if the person were a corporation, controlled, directly or indirectly in any manner whatever, by a person, or by a group of persons that includes a person, who is not

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a corporation, a commission or an association, to which any of paragraphs (1)(d) to (d.6) apply.

(6) Section 149 of the Act is amended by adding the following after subsection (10):

Votes or *de facto* control

Geographical
boundaries —
body
performing
government
functions

(11) For the purpose of this section, the geographical boundaries of a municipal or public body performing a function of government are

(a) the geographical boundaries that encompass the area in respect of which an Act of Parliament or an agreement given effect by an Act of Parliament recognizes or grants to the body a power to impose taxes; or

(b) if paragraph (a) does not apply, the geographical boundaries within which that body has been authorized by the laws of Canada or of a province to exercise that function.

(7) Subsections (1), (2), and (4) to (6) apply to taxation years that begin after May 8, 2000, except that for those taxation years that began before December 21, 2002, subsection 149(1.3) of the Act, as enacted by subsection (5), is to be read as follows:

(1.3) For the purposes of paragraph (1)(d.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more entities, each of which is a municipality or a municipal or public body, only if the entities own shares of the capital stock of the corporation that give the entities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

(8) Subsection (3) applies to the 1997 and subsequent taxation years.

(9) Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax payable under the Act for any taxation year that began before February 27, 2004 shall be made that is necessary to give effect to the provisions of the Act enacted by subsections (1), (2) and (4) to (7).

148. (1) The definition "public foundation" in subsection 149.1(1) of the Act is replaced by the following:

"public foundation", at a particular time, means a charitable foundation

"public
foundation"
« fondation
publique »

(a) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the foundation,

(ii) each person described by subparagraph (b)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (b)(i), and

(b) that is not, at the particular time, and would not at the particular time be, if the foundation were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(I)),

(A) who immediately after the particular time, has contributed to the foundation amounts that are, in total, greater than 50% of the capital of the foundation immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the foundation amounts that were, in total, greater than 50% of the capital of the foundation immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

(2) The portion of the definition "charitable organization" in subsection 149.1(1) of the Act before paragraph (a) is replaced by the following:

"charitable organization", at any particular time, means an organization, whether or not incorporated,

(3) Paragraphs (c) and (d) of the definition "charitable organization" in subsection 149.1(1) of the Act are replaced by the following:

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(I)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(I)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

(4) The portion of the description of A in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (a) is replaced by the following:

A is 80% of the total of all amounts each of which is the eligible amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

(5) The portion of the description of A.1 in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (a) is replaced by the following:

A.1 is 80% of the total of all amounts each of which is the eligible amount of a gift received in a preceding taxation year, to the extent that the eligible amount

(6) Paragraph (d) of the definition "enduring property" in subsection 149.1(1) in the English version of the Act is replaced by the following:

(d) a gift received by the registered charity as a transferee from an original recipient charity or another transferee of a property that was, before that gift was so received, an enduring property of the original recipient charity or of the other transferee because of paragraph (a) or (c) or this paragraph, or property substituted for the gift, if, in the case of a property that was an enduring property of an original recipient charity because of paragraph (c), the gift is subject to the same terms and conditions under the trust or direction as applied to the original recipient charity;

(7) Subsection 149.1(2) of the Act is amended by striking out the word "or" at the end of paragraph (a), by adding the word "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

(8) Subsection 149.1(3) of the Act is amended by adding the following after paragraph (b):

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(9) Subsection 149.1(4) of the Act is amended by adding the following after paragraph (b):

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(10) The portion of subsection 149.1(9) of the Act after paragraph (b) is replaced by the following:

is, notwithstanding subsection (8), deemed to be income of the charity for, and the eligible amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (a) expires or the time referred to in paragraph (b) occurs, as the case may be.

(11) Paragraph 149.1(15)(b) of the Act is replaced by the following:

(b) the Minister may make available to the public in any manner that the Minister considers appropriate a listing of all registered, or previously registered, charities and Canadian amateur athletic associations that indicates for each of them

(i) its name and address,

(ii) its registration number and date of registration, and

(iii) the effective date of any revocation, annulment or termination of its registration.

(12) Subsection (1) applies after 1999 except that, in respect of a foundation that has not been designated before 2000 as a private foundation or a charitable organization under subsection 149.1(6.3) of the Act or under subsection 110(8.1) or (8.2) of the Act, as enacted by chapter 148 of the Revised Statutes of Canada, 1952, and that has not applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition “registered charity” in subsection 248(1) of the Act, subparagraph (a)(iii) and paragraph (b) of the definition “public foundation” in subsection 149.1(1) of the Act, as enacted by subsection (1), are in their application before the earlier of the day, if any, on which the foundation is designated after 1999 as a private foundation or a charitable organization under subsection 149.1(6.3) of the Act and January 1, 2005 to be read

(a) without reference to “(other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l))”; and

(b) as if the reference to “50%” in paragraph (b) were a reference to “75%”.

(13) Subsections (2) and (3) apply after 1999 except that, in respect of a charitable organization that has not been designated before 2000 as a private foundation or a public foundation under subsection 149.1(6.3) of the Act or under subsection 110(8.1) or (8.2) of the *Income Tax Act*, as enacted by chapter 148 of the Revised Statutes of Canada, 1952, and that has not applied after February 15, 1984 for registration under

paragraph 110(8)(c) of that Act or under the definition “registered charity” in subsection 248(1) of the *Income Tax Act*, subparagraphs (c)(ii) and (iii) of the definition “charitable organization” in subsection 149.1(1) of the Act, as enacted by subsection (3), apply after the earlier of the day, if any, on which the organization is designated after 1999 as a private foundation or a public foundation under subsection 149.1(6.3) of the Act and December 31, 2004.

(14) Subsections (4), (5) and (7) to (9) apply to gifts made after December 20, 2002.

(15) Subsection (6) applies to taxation years that begin after March 22, 2004.

(16) Subsection (10) applies after December 20, 2002.

(17) An application referred to in subsection 149.1(6.3) of the Act, in respect of one or more taxation years after 1999, may be made after 1999 and before the 90th day after this Act is assented to. If a designation referred to in that subsection for any of those taxation years is made in response to the application, the charity is deemed to be registered as a charitable organization, a public foundation or a private foundation, as the case may be, for the taxation years that the Minister of National Revenue specifies.

149. (1) The portion of subsection 152(1.2) of the Act before paragraph (a) is replaced by the following:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with any modifications that the circumstances require, to a determination or a redetermination of an amount under this Division or an amount deemed under section 122.61 to be an overpayment on account of a taxpayer’s liability under this Part, except that

(2) Subsections 152(3.4) and (3.5) of the Act are repealed.

(3) Subsections (1) and (2) apply in respect of forms filed after March 20, 2003.

150. (1) Paragraph 157(3)(c) of the Act is replaced by the following:

(c) if the corporation is a mutual fund corporation, 1/12 of the total of

(i) the corporation’s capital gains refund (within the meaning assigned by section 131) for the year, and

(ii) the amount that, because of subsection 131(5) or, where the corporation is a prescribed labour-sponsored venture capital corporation, because of subsection 131(11), is the corporation’s dividend refund (within the meaning assigned by section 129) for the year,

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

151. (1) Subsection 159(3) of the Act is replaced by the following:

(3) If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting

Provisions
applicable

Personal
liability

in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(a) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(b) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(c) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

(2) Subsection (1) applies to assessments made after December 20, 2002.

152. (1) The portion of subsection 160(1) of the Act after subparagraph (e)(i) is replaced by the following:

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

(2) The portion of subsection 160(1.1) of the Act after the description of B is replaced by the following:

but nothing in this subsection limits the liability of the other taxpayer under any other provision of this Act or of any person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

(3) Paragraphs 160(1.2)(a) and (b) of the Act are replaced by the following:

(a) carried on a business that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

(b) was a specified shareholder of a corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

(4) Paragraph 160(1.2)(d) of the Act is replaced by the following:

(*d*) was a shareholder of a professional corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year, or

(5) Subsection 160(1.2) of the Act is amended by adding the following after paragraph (*e*):

but nothing in this subsection limits the liability of the specified individual under any other provision of this Act or of the parent for the interest that the parent is liable to pay under this Act on an assessment in respect of the amount that the parent is liable to pay because of this subsection.

(6) Subsection 160(2) of the Act is replaced by the following:

Assessment

(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(7) Subsections (1), (2), (5) and (6) apply in respect of assessments made after December 20, 2002.

(8) Subsections (3) and (4) apply after December 20, 2002.

153. (1) Subsection 160.1(3) of the Act is replaced by the following:

Assessment

(3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it were made under section 152 in respect of taxes payable under this Part, except that no interest is payable on an amount assessed in respect of an excess referred to in subsection (1) that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61.

(2) Subsection (1) applies to assessments made after December 20, 2002.

154. (1) The portion of subsection 160.2(1) of the Act after paragraph (*b*) is replaced by the following:

the taxpayer and the last annuitant under the plan are jointly and severally, or solidarily, liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146(8.8) that the total of all amounts each of which is an amount determined under paragraph (*b*) in respect of the taxpayer is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under

this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(2) The portion of subsection 160.2(2) of the Act after paragraph (b) is replaced by the following:

the taxpayer and the annuitant are jointly and severally, or solidarily, liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (b) is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(3) Section 160.2 of the Act is amended by adding the following after subsection (2):

(2.1) Where a taxpayer is deemed by section 75.2 to have received at any time an amount out of or under an annuity that is a qualifying trust annuity with respect to the taxpayer, the taxpayer, the annuitant under the annuity and the policyholder are jointly and severally, or solidarily, liable to pay the part of the taxpayer's tax under this Part for the taxation year of the taxpayer that includes that time that is equal to the amount, if any, determined by the formula

$$A - B$$

where

A is the amount of the taxpayer's tax under this Part for that taxation year, and

B is the amount that would be the taxpayer's tax under this Part for that taxation year if no amount were deemed by section 75.2 to have been received by the taxpayer out of or under the annuity in that taxation year.

(2.2) Subsection (2.1) limits neither

(a) the liability of the taxpayer referred to in subsection (2.1) under any other provision of this Act; nor

(b) the liability of an annuitant or policyholder referred to in subsection (2.1) for the interest that the annuitant or policyholder is liable to pay under this Act on an assessment in respect of the amount that the annuitant or policyholder is liable to pay because of that subsection.

(4) Subsection 160.2(3) of the Act is replaced by the following:

(3) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circum-

Joint and several liability in respect of a qualifying trust annuity

No limitation on liability

Assessment

stances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(5) Section 160.2 is amended by adding the following after subsection (4):

Rules
applicable –
qualifying
trust annuity

(5) Where an annuitant or policyholder has, because of subsection (2.1), become jointly and severally, or solidarily, liable with a taxpayer in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

(a) a payment by the annuitant on account of the annuitant's liability, or by the policyholder on account of the policyholder's liability, shall to the extent of the payment discharge their liability, but

(b) a payment by the taxpayer on account of the taxpayer's liability only discharges the annuitant's and the policyholder's liability to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the annuitant and the policyholder were, by subsection (2.1), made liable.

(6) Subsections (1), (2) and (4) apply to assessments made after December 20, 2002.

(7) Subsections (3) and (5) apply to assessments made after 2005.

155. (1) Subsections 160.3(1) and (2) of the Act are replaced by the following:

Liability in
respect of
amounts
received out of
or under RCA
trust

160.3 (1) If an amount required to be included in the income of a taxpayer because of paragraph 56(1)(x) is received by a person with whom the taxpayer is not dealing at arm's length, that person is jointly and severally, or solidarily, liable with the taxpayer to pay a part of the taxpayer's tax under this Part for the taxation year in which the amount is received equal to the amount by which the taxpayer's tax for the year exceeds the amount that would be the taxpayer's tax for the year if the amount had not been received, but nothing in this subsection limits the liability of the taxpayer under any other provision of this Act or of the person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

Assessment

(2) The Minister may at any time assess a person in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(2) Subsection (1) applies to assessments made after December 20, 2002.

156. (1) Subsection 160.4(1) of the Act is replaced by the following:

Liability in
respect of
transfers by
insolvent
corporations

160.4 (1) If property is transferred at any time by a corporation to a taxpayer with whom the corporation does not deal at arm's length at that time and the corporation is not entitled because of subsection 61.3(3) to deduct an amount under section 61.3 in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the taxpayer is jointly and severally, or solidarily, liable with the corporation to pay the lesser of the corporation's tax payable under this Part for the year and the amount, if any, by which the fair market value of the property at that time exceeds the fair

market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(2) The portion of subsection 160.4(2) of the Act after paragraph (c) is replaced by the following:

the transferee is jointly and severally, or solidarily, liable with the transferor and the debtor to pay an amount of the debtor's tax under this Part equal to the lesser of the amount of that tax that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

(3) Subsection 160.4(3) of the Act is replaced by the following:

Assessment (3) The Minister may at any time assess a person in respect of any amount payable by the person because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it had been made under section 152 in respect of taxes payable under this Part.

(4) Subsections (1) to (3) apply to assessments made after December 20, 2002.

157. (1) Subsection 162(6) of the French version of the Act is replaced by the following:

Défaut de fournir son numéro d'identification (6) Toute personne ou société de personnes qui ne fournit pas son numéro d'assurance sociale ou son numéro d'entreprise à la personne — tenue par la présente loi ou par une disposition réglementaire de remplir une déclaration de renseignements devant comporter ce numéro — qui lui enjoint de le fournir est passible d'une pénalité de 100 \$ pour chaque défaut à moins que, dans les 15 jours après avoir été enjoint de fournir ce numéro, elle ait demandé qu'un numéro d'assurance sociale ou un numéro d'entreprise lui soit attribué et qu'elle l'ait fourni à cette personne dans les 15 jours après qu'elle l'a reçu.

(2) Subsection (1) applies after June 18, 1998.

158. (1) Paragraph 163(2)(c.1) of the Act is replaced by the following:

(c.1) the amount, if any, by which

- (i) the total of all amounts each of which is an amount that would be deemed by section 122.5 to be paid by that person during a month specified for the year or, where that person is the qualified relation of an individual in relation to that specified month (within the meaning assigned by subsection 122.5(1)), by that individual, if that total were calculated by reference to the information provided in the person's return of income (within the meaning assigned by subsection 122.5(1)) for the year

exceeds

(ii) the total of all amounts each of which is an amount that is deemed by section 122.5 to be paid by that person or by an individual of whom the person is the qualified relation in relation to a month specified for the year (within the meaning assigned to subsection 122.5(1)),

(2) Subsection (1) applies to amounts deemed to be paid during months specified for the 2001 and subsequent taxation years.

159. (1) Section 164 of the Act is amended by adding the following after subsection (1.5):

Where
subsection
(1.52) applies

(1.51) Subsection (1.52) applies to a taxpayer for a taxation year if, at any time after the beginning of the year

(a) the taxpayer has, in respect of the tax payable by the taxpayer under this Part (and, if the taxpayer is a corporation, Parts I.3, VI, VI.1 and XIII.1) for the year, paid under any of sections 155 to 157 one or more instalments of tax;

(b) it is reasonable to conclude that the total amount of those instalments exceeds the total amount of taxes that will be payable by the taxpayer under those Parts for the year; and

(c) the Minister is satisfied that the payment of the instalments has caused or will cause undue hardship to the taxpayer.

Instalment
refund

(1.52) If this subsection applies to a taxpayer for a taxation year, the Minister may refund to the taxpayer all or any part of the excess referred to in paragraph (1.51)(b).

Penalties,
interest not
affected

(1.53) For the purpose of the calculation of any penalty or interest under this Act, an instalment is deemed not to have been paid to the extent that all or any part of the instalment can reasonably be considered to have been refunded under subsection (1.52).

(2) Subsection 164(1.6) of the Act is repealed.

(3) The portion of subsection 164(3) of the Act before paragraph (a) is replaced by the following:

Interest on
refunds and
repayments

(3) If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

(4) Subsection (2) applies after March 20, 2003.

(5) Subsection (3) applies in respect of forms filed after March 20, 2003.

160. (1) Paragraph (g) of the definition “financial institution” in subsection 181(1) of Act is replaced by the following:

(g) a corporation

- (i) listed in the schedule, or
- (ii) all or substantially all of the assets of which are shares or indebtedness of financial institutions to which the corporation is related;

(2) Subsection (1) applies after December 22, 1997, but in applying paragraph (g) of the definition “financial institution” in subsection 181(1) of the Act, as enacted by subsection (1), in respect of taxation years that end before December 20, 2002, that paragraph is to be read as follows:

- (g) prescribed, or listed in the schedule;

161. (1) Subparagraph 181.2(3)(g)(i) of the Act is replaced by the following:

- (i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would, if this paragraph and paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations, be determined under those paragraphs in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year

(2) Paragraph 181.2(3)(i) of the Act is replaced by the following:

- (i) the amount of any deficit deducted in computing its shareholders’ equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year,

(3) Subsection 181.2(5) of the Act is replaced by the following:

(5) For the purposes of subsection (4) and this subsection, the carrying value at the end of a taxation year of an interest of a corporation or of a partnership (each of which is referred to in this subsection as the “member”) in a particular partnership is deemed to be the member’s specified proportion, for the particular partnership’s last fiscal period that ends at or before the end of the taxation year, of the amount that would, if the particular partnership were a corporation, be the particular partnership’s investment allowance at the end of that fiscal period.

(4) Subsections (1) and (3) apply to taxation years that begin after December 20, 2002.

(5) Subsection (2) applies to taxation years that begin after 1995.

(6) In applying paragraphs 181.2(4)(b), (c) and (d.1) of the Act to a particular corporation in respect of an asset that is a loan or an advance to, or an obligation of, another corporation or partnership that the particular corporation holds at the end of a taxation year of the particular corporation that began before December 20, 2002, those paragraphs are to be read without reference to “(other than a financial institution)” and to “(other than financial institutions)” if, at the end of the taxation year,

- (a) the particular corporation deals at arm’s length with the other corporation or the partnership, as the case may be; and**

(b) the other corporation is a financial institution, or the partnership is not a partnership described in paragraph 181.2(4)(d.1) of the Act, as the case may be, solely because of section 160 and subsections 193(1) and (3) of this Act.

162. (1) Subparagraph 181.3(3)(a)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year, and

(2) Subparagraph 181.3(3)(b)(iv) of the Act is replaced by the following:

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year;

(3) Subparagraph 181.3(3)(c)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year,

(4) Paragraph 181.3(3)(c) of the Act is amended by striking out the word "and" at the end of subparagraph (v), by adding the word "and" at the end of subparagraph (vi) and by adding the following after subparagraph (vi):

(vii) any amount recoverable through reinsurance, to the extent that it can reasonably be regarded as being included in the amount determined under subparagraph (iii) in respect of a claims reserve;

(5) Subparagraph 181.3(3)(d)(iv) of the Act is amended by striking out the word "and" at the end of clause (D) and by adding the following after clause (E):

(F) the total of all amounts each of which is an amount recoverable through reinsurance, to the extent that it can reasonably be regarded as being included in the amount determined under clause (A) in respect of a claims reserve; and

(6) Subsections (1) to (5) apply to taxation years that begin after 1995.

163. (1) Subsections 184(2) to (5) of the Act are replaced by the following:

(2) If a corporation has elected in accordance with subsection 83(2), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock (in this section referred to as the "original dividend") and the full amount of the original dividend exceeds the portion of the original dividend deemed by that subsection to be a capital dividend or capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to $\frac{3}{5}$ of the excess.

(3) If, in respect of an original dividend payable at a particular time, a corporation would, but for this subsection, be required to pay a tax under this Part in respect of an excess referred to in subsection (2), and the corporation elects in prescribed manner on or before the day

Tax on
excessive
elections

Election to
treat excess as
separate
dividend

that is 90 days after the day of mailing of the notice of assessment in respect of the tax that would otherwise be payable under this Part, the following rules apply:

- (a) the portion of the original dividend deemed by subsection 83(2), 130.1(4) or 131(1) to be a capital dividend or capital gains dividend, as the case may be, is deemed for the purposes of this Act to be the amount of a separate dividend that became payable at the particular time;
- (b) if the corporation identifies in its election any part of the excess, that part is, for the purposes of any election under subsection 83(2), 130.1(4) or 131(1) in respect of that part, and, where the corporation has so elected, for all purposes of this Act, deemed to be the amount of a separate dividend that became payable immediately after the particular time;
- (c) the amount by which the excess exceeds any portion deemed by paragraph (b) to be a separate dividend for all purposes of this Act is deemed to be a separate taxable dividend that became payable at the particular time; and
- (d) each person who held any of the issued shares of the class of shares of the capital stock of the corporation in respect of which the original dividend was paid is deemed
 - (i) not to have received any portion of the original dividend, and
 - (ii) to have received, at the time that any separate dividend determined under any of paragraphs (a) to (c) became payable, the proportion of that dividend that the number of shares of that class held by the person at the particular time is of the number of shares of that class outstanding at the particular time except that, for the purpose of Part XIII the separate dividend is deemed to be paid on the day that the election in respect of this subsection is made.

(4) An election under subsection (3) is valid only if

- (a) it is made with the concurrence of the corporation and all its shareholders
 - (i) who received or were entitled to receive all or any portion of the original dividend, and
 - (ii) whose addresses were known to the corporation; and
- (b) either
 - (i) it is made on or before the day that is 30 months after the day on which the original dividend became payable, or
 - (ii) each shareholder described in subparagraph (a)(i) concurs with the election, in which case, notwithstanding subsections 152(4) to (5), any assessment of the tax, interest and penalties payable by each of those shareholders for any taxation year shall be made that is necessary to take the corporation's election into account.

Exception for
non-taxable
shareholders

(5) If each person who, in respect of an election made under subsection (3), is deemed by subsection (3) to have received a dividend at a particular time is also, at the particular time, a person all of whose taxable income is exempt from tax under Part I,

(a) subsection (4) does not apply to the election; and

(b) the election is valid only if it is made on or before the day that is 30 months after the day on which the original dividend became payable.

(2) Subsection (1) applies to original dividends paid by a corporation after its 1999 taxation year except that, for the purpose of subsection 184(5) of the Act, as enacted by subsection (1), an election made before the 90th day after this Act is assented to is deemed to have been made in a timely manner.

164. In applying the description of B in paragraph 188(1)(a) of the Act in respect of gifts made to a charity after December 20, 2002, as those gifts are relevant in respect of notices of intention to revoke the registration of the charity and certificates under subsection 5(1) of the *Charities Registration (Security Information) Act* that are issued by the Minister of National Revenue before June 13, 2005, that description is to be read as follows:

B is the total of all amounts each of which is the eligible amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the “winding-up period”) that begins on the valuation day and ends immediately before the payment day, or an amount received by it in the winding-up period from a registered charity,

165. (1) Subparagraph 190.13(a)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

(2) Subparagraph 190.13(b)(iv) of the Act is replaced by the following:

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

(3) Subsections (1) and (2) apply to taxation years that begin after 1995.

166. (1) Section 191 of the Act is amended by adding the following after subsection (5):

(6) If at any time a corporation pays a dividend to a partnership, the corporation is, for the purposes of this subsection and paragraph (a) of the definition “excluded dividend” in subsection (1), deemed to have paid at that time to each member of the partnership a dividend equal to the amount determined by the formula

$$A \times B .$$

where

Excluded
dividend
partner

- A is the amount of the dividend paid to the partnership; and
- B is the member's specified proportion for the last fiscal period of the partnership that ended before that time (or, if the partnership's first fiscal period includes that time, for that first fiscal period).

(2) Subsection (1) applies to dividends paid after December 20, 2002.

167. (1) Subparagraph 191.1(1)(a)(i) of the Act is replaced by the following:

- (i) 50% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year on short-term preferred shares exceeds the corporation's dividend allowance for the year,

(2) Subsection (1) applies to dividends paid by a corporation in its 2003 and subsequent taxation years.

168. Section 200 of the French version of the Act is replaced by the following:

200. Pour l'application de la présente partie, la distribution par une fiducie d'un placement non admissible à un bénéficiaire de la fiducie est réputée être une disposition du placement, et le produit de disposition du placement est réputé être sa juste valeur marchande au moment de la distribution.

169. (1) Clause 204.81(1)(c)(v)(E) of the Act is replaced by the following:

(E) the redemption occurs

(I) more than eight years after the day on which the share was issued, or

(II) if the day that is eight years after that issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day, or

(2) Section 204.81 of the Act is amended by adding the following after subsection (1):

(1.1) In applying clause (1)(c)(v)(E) in relation to any time before 2004 in respect of a corporation incorporated before March 6, 1996, the references in that clause to "eight" are replaced with references to "five" if, at that time, the relevant statements in the corporation's articles refer to "five".

(1.2) In applying subsection (1) in relation to any time before 2004, to a corporation incorporated before February 7, 2000, if the articles of the corporation comply with subclause (1)(c)(v)(E)(I) (as modified, where relevant, by subsection (1.1)), those articles are deemed to provide the statement required by subclause (1)(c)(v)(E)(II).

(3) Subsection (1) applies after February 6, 2000 to corporations incorporated at any time.

(4) Subsection (2) applies after February 6, 2000.

170. (1) The portion of subsection 204.9(5) of the French version of the Act before paragraph (b) is replaced by the following:

Distribution
assimilée à une
disposition

Corporations
incorporated
before March
6, 1996

Deemed
provisions in
articles

(5) Pour l'application de la présente partie, dans le cas où un bien détenu par une fiducie régie par un régime enregistré d'épargne-études (appelé « régime cédant » au présent paragraphe) est distribué, à un moment donné, à une fiducie régie par un autre semblable régime (appelé « régime cessionnaire » au présent paragraphe), les règles suivantes s'appliquent :

a) sauf disposition contraire énoncée aux alinéas *b)* et *c)*, le montant de la distribution est réputé ne pas avoir été versé au régime cessionnaire;

(2) The portion of paragraph 204.9(5)(c) of the French version of the Act before subparagraph (i) is replaced by the following:

c) sauf pour l'application du présent paragraphe à une distribution effectuée après le moment donné, du paragraphe (4) à un remplacement de bénéficiaire effectué après ce moment et du paragraphe 204.91(3) à des faits s'étant produits après ce moment, l'alinéa *b)* ne s'applique pas par suite de la distribution si, selon le cas :

(3) Paragraph 204.9(5)(d) of the French version of the Act is replaced by the following:

d) dans le cas où les sous-alinéas *c)(i)* ou *(ii)* s'appliquent à la distribution, le montant de la distribution est réputé ne pas avoir été retiré du régime cédant;

171. (1) The definition “specified proportion” in subsection 206(1) of the Act is repealed.

(2) Subparagraphs (b)(i) to (iii) of the definition “cost amount” in subsection 206(1) of the Act are replaced by the following:

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest (otherwise than as proceeds of disposition of the interest), and

(ii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

(3) Paragraph (d.1) of the definition “foreign property” in subsection 206(1) of the Act is replaced by the following:

(d.1) any share (other than an excluded share) of the capital stock of, or any debt obligation (other than a debt obligation described in subparagraph (g)(iii)) issued by, a corporation (other than an investment corporation, a mutual fund corporation or a registered investment) that is a Canadian corporation, if shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

(4) Paragraph (g) of the definition “foreign property” in subsection 206(1) of the Act is amended by striking out the word “or” at the end of subparagraph (i), by adding the word “or” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) a debt obligation that is fully secured by a mortgage, charge, hypothec or similar instrument in respect of real or immovable property situated in Canada or that would be fully secured were it not for a decline in the fair market value of the property after the debt obligation was issued,

(5) The portion of subsection 206(3.1) of the French version of the Act before paragraph (a) is replaced by the following:

(3.1) Pour ce qui est de l'application du sous-alinéa (2)a)(ii) à un moment donné ou postérieurement, lorsqu'un titre déterminé par rapport à un autre titre est acquis au moment donné par le contribuable mentionné au paragraphe (3.2) relativement au titre et que le titre est un bien étranger à ce moment, les règles suivantes s'appliquent :

(6) Subsection (1) applies after December 20, 2002.

(7) Subsection (2) applies to months that end after December 20, 2002 and before 2005.

(8) Subsections (3) and (4) apply to months that end after October 2003 and before 2005.

(9) Subsection (5) applies to months that end after 1997 and before 2005.

172. (1) Section 207.31 of the Act is replaced by the following:

207.31 Any charity, municipality or public body performing a function of government in Canada (referred to in this section as the "recipient") that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the recipient shall, in respect of the year, pay a tax under this Part equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property if the property were given to the recipient immediately before the disposition or change.

(2) Subsection (1) applies in respect of dispositions of or changes of use of property after ANNOUNCEMENT DATE.

173. (1) Sections 210 and 210.1 of the Act are replaced by the following:

210. (1) The following definitions apply in this Part.

"designated beneficiary", under a particular trust at any time, means a beneficiary, under the particular trust, who is at that time

(a) a non-resident person;

(b) a non-resident-owned investment corporation;

(c) a person who is, because of subsection 149(1), exempt from tax under Part I on all or part of their taxable income and who acquired an interest as a beneficiary under the

Acquisition
d'un titre
déterminé

Tax payable by
recipient of an
ecological gift

Definitions

"designated
beneficiary"
« bénéficiaire
étranger ou
assimilé »

particular trust after October 1, 1987 directly or indirectly from a beneficiary under the particular trust except if

(i) the interest was, at all times after the later of October 1, 1987 and the day on which the interest was created, held by persons who were exempt from tax under Part I on all of their taxable income because of subsection 149(1), or

(ii) the person is a trust, governed by a registered retirement savings plan or a registered retirement income fund, who acquired the interest, directly or indirectly, from an individual or the spouse or common-law partner, or former spouse or common-law partner, of the individual who was, immediately after the interest was acquired, a beneficiary under the trust governed by the fund or plan;

(d) another trust (referred to in this paragraph as the “other trust”) that is not a testamentary trust, a mutual fund trust or a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, if any beneficiary under the other trust is at that time

(i) a non-resident person,

(ii) a non-resident-owned investment corporation,

(iii) a trust that is not

(A) a testamentary trust,

(B) a mutual fund trust,

(C) a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, or

(D) a trust

(I) whose interest, at that time, in the other trust was held, at all times after the day on which the interest was created, either by it or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(II) none of the beneficiaries under which is, at that time, a designated beneficiary under it, or

(iv) a person or partnership that

(A) is a designated beneficiary under the other trust because of paragraph (c) or (e), or

(B) would be a designated beneficiary under the particular trust because of paragraph (c) or (e) if, instead of being a beneficiary under the other trust, the person or partnership were at that time a beneficiary, under the particular trust, whose interest as a beneficiary under the particular trust were

(I) identical to its interest (referred to in this clause as the “particular interest”) as a beneficiary under the other trust,

(II) acquired from each person or partnership from whom it acquired the particular interest, and

(III) held, at all times after the later of October 1, 1987 and the day on which the particular interest was created, by the same persons or partnerships that held the particular interest at those times; or

(e) a particular partnership any of the members of which is at that time

(i) another partnership, except if

(A) each such other partnership is a Canadian partnership,

(B) the interest of each such other partnership in the particular partnership is held, at all times after the day on which the interest was created, by the other partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(C) the interest of each member, of each such other partnership, that is a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income was held, at all times after the day on which the interest was created, by that member or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(D) the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(ii) a non-resident person,

(iii) a non-resident-owned investment corporation,

(iv) another trust that is, under paragraph (d), a designated beneficiary of the particular trust or that would, under paragraph (d), be a designated beneficiary of the particular trust if the other trust were at that time a beneficiary under the particular trust whose interest as a beneficiary under the particular trust were

(A) acquired from each person or partnership from whom the particular partnership acquired its interest as a beneficiary under the particular trust, and

(B) held, at all times after the later of October 1, 1987 and the day on which the particular partnership's interest as a beneficiary under the particular trust was created, by the same persons or partnerships that held that interest of the particular partnership at those times, or

(v) a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income except if the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income.

“designated
income”
« revenu de
distribution »

“designated income”, of a trust for a taxation year, means the amount that would be the income of the trust for the year determined under section 3 if

- (a) this Act were read without reference to subsections 104(6), (12) and (30);
- (b) the trust had no income other than taxable capital gains from dispositions described in paragraph (c) and incomes from
 - (i) real or immovable properties in Canada (other than Canadian resource properties),
 - (ii) timber resource properties,
 - (iii) Canadian resource properties (other than properties acquired by the trust before 1972), and
 - (iv) businesses carried on in Canada;

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from

- (i) dispositions of taxable Canadian property, and
- (ii) dispositions of particular property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)), or property for which the particular property is substituted, that was transferred at any particular time to a particular trust in circumstances in which subsection 73(1) or 107.4(3) applied, if
 - (A) it is reasonable to conclude that the property was so transferred in anticipation that a person beneficially interested at the particular time in the particular trust would subsequently cease to reside in Canada, and a person beneficially interested at the particular time in the particular trust did subsequently cease to reside in Canada, or
 - (B) when the property was so transferred, the terms of the particular trust satisfied the conditions in subparagraph 73(1.01)(c)(i) or (iii), and it is reasonable to conclude that the transfer was made in connection with the cessation of residence, on or before the transfer, of a person who was, at the time of the transfer, beneficially interested in the particular trust and a spouse or common-law partner, as the case may be, of the transferor of the property to the particular trust; and

(d) the only losses referred to in paragraph 3(d) were losses from sources described in any of subparagraphs (b)(i) to (iv).

Tax not
payable

(2) No tax is payable under this Part for a taxation year by a trust that was throughout the year

- (a) a testamentary trust;
- (b) a mutual fund trust;
- (c) exempt from tax under Part 1 because of subsection 149(1);

(d) a trust to which paragraph (a), (a.1) or (c) of the definition “trust” in subsection 108(1) applies; or

(e) non-resident.

(2) Subsection (1) applies to the 1996 and subsequent taxation years, except that paragraph (c) of the definition “designated income” in subsection 210(1) of the Act, as enacted by subsection (1), is to be read

(a) in respect of dispositions that occur after October 1, 1996 and before December 21, 2002, as follows:

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property; and

and

(b) in respect of dispositions that occur in a 1996 taxation year and before October 2, 1996, as follows:

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of property that would have been taxable Canadian property if, at no time in the year, the trust had been resident in Canada; and

174. (1) Subsections 210.2(1.1) and (2) of the Act are replaced by the following:

(2) Notwithstanding subsection 210(2), a trust shall pay a tax under this Part in respect of a particular taxation year of the trust equal to 56.25% of the amount that is required by subsection 143.1(2) to be included in computing the income under Part I for a taxation year of a beneficiary under the trust, if

(a) the beneficiary is at any time in the particular taxation year a designated beneficiary under the trust; and

(b) the particular taxation year ends in that taxation year of the beneficiary.

(2) The portion of subsection 210.2(3) of the French version of the Act before the formula is replaced by the following:

(3) Dans le cas où une partie du revenu d'une fiducie pour une année d'imposition est incluse, en application du paragraphe 104(13) ou 105(2), dans le calcul du revenu en vertu de la partie I d'une personne qui n'a été bénéficiaire étranger ou assimilé de la fiducie à aucun moment de l'année ou dans la partie du revenu d'une personne non-résidente qui est soumise, par application du paragraphe 2(3), à l'impôt payable en vertu de la partie I et n'en est pas exonérée par un traité fiscal — sauf s'il s'agit d'une personne qui, à un moment de l'année, serait un bénéficiaire étranger ou assimilé de la fiducie si l'article 210 s'appliquait compte non tenu de l'alinéa a) de la définition de « bénéficiaire étranger ou assimilé » à cet article —, le montant, calculé selon la formule ci-après, attribué à la personne par la fiducie dans sa déclaration pour l'année en vertu de la présente partie est réputé payé le quatre-vingt-dixième jour suivant la fin de l'année d'imposition de la fiducie au titre de

Amateur
athlete trusts

Crédit d'impôt
remboursable
aux
bénéficiaires
résidant au
Canada

l'impôt payable en vertu de la partie I par cette personne pour l'année d'imposition de celle-ci au cours de laquelle l'année d'imposition de la fiducie se termine :

(3) Paragraph 210.2(3)(b) of the English version of the Act is replaced by the following:

(b) the income of a non-resident person (other than a person who, at any time in the year, would be a designated beneficiary under the trust if section 210 were read without reference to paragraph (a) of the definition “designated beneficiary” in that section) that is subject to tax under Part I by reason of subsection 2(3) and is not exempt from tax under Part I by reason of a provision contained in a tax treaty,

(4) Subsections (1) to (3) apply to the 1996 and subsequent taxation years, except that

(a) in applying the portion of subsection 210.2(3) of the French version of the Act before the formula, as enacted by subsection (2), for the 1996 and 1997 taxation years, the reference to “un traité fiscal” is to be read as a reference to “un accord ou une convention fiscale ayant force de loi au Canada et conclue entre le gouvernement du Canada et le gouvernement d’un pays étranger”; and

(b) in applying paragraph 210.2(3)(b) of the English version of the Act, as enacted by subsection (3), for the 1996 and 1997 taxation years the reference to “treaty” is to be read as a reference to “convention or agreement with another country that has the force of law in Canada”.

175. (1) Subsection 211.6(1) of the Act is replaced by the following:

211.6 (1) Every trust that is a qualifying environmental trust at the end of a taxation year (other than a trust that is at that time described by paragraph 149(1)(z.1) or (z.2)) shall pay a tax under this Part for the year equal to 28% of its income under Part I for that taxation year.

(2) Subsection (1) applies to the 1997 and subsequent taxation years.

176. (1) Subparagraph (i) of the description of B in paragraph 211.8(1)(a) of the Act is amended by striking out the word “or” at the end of clause (A) and by replacing clause (B) with the following:

(B) more than five years after its issuance, or

(C) if the day that is five years after its issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day,

(2) The description of B in paragraph 211.8(1)(a) of the Act is amended by adding the following after subparagraph (i):

(i.1) nil, where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the original acquisition of the share was after March 5, 1996 and the redemption, acquisition or cancellation is in February or on March 1st of a calendar year but is not more than 31 days before the day that is eight years after the day on which the share was issued,

(3) Subsections (1) and (2) apply to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995.

177. (1) Subparagraph 212(1)(b)(iv) of the Act is replaced by the following:

(iv) interest payable to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited was issued under subsection (14),

(2) The portion of subparagraph 212(1)(b)(xii) of the Act before clause (A) is replaced by the following:

(xii) interest payable by a lender under a securities lending arrangement, if the lender and the borrower deal with each other at arm's length and the lender is a financial institution prescribed for the purpose of clause (iii)(D), or a registered securities dealer resident in Canada, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

(3) Paragraph 212(1)(b) of the Act is amended by striking out the word "and" at the end of subparagraph (xi), by adding the word "and" at the end of subparagraph (xii) and by adding the following after subparagraph (xii):

(xiii) an amount paid or credited under a securities lending arrangement that is deemed by subparagraph 260(8)(c)(i) to be a payment made by a borrower to a lender of interest if

(A) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada, and

(B) the security that is transferred or lent to the borrower under the securities lending arrangement is described in paragraph (b) or (c) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer;

(4) Subparagraph 212(1)(c)(ii) of the French version of the Act is replaced by the following:

(ii) peut raisonnablement être considérée, compte tenu des circonstances, y compris les modalités de la succession ou de l'acte de fiducie, comme la distribution d'un montant reçu par la succession ou la fiducie, ou comme une somme provenant d'un tel montant, au titre d'un dividende non imposable sur une action du capital-actions d'une société résidant au Canada;

(5) Subparagraph 212(1)(d)(iv) of the Act is replaced by the following:

(iv) unless paragraph (i) applies to the amount, made pursuant to an agreement between a person resident in Canada and a non-resident person under which the non-resident person agrees not to use or not to permit any other person to use any thing referred to in subparagraph (i) or any information referred to in subparagraph (ii), or

(6) Subparagraph 212(1)(d)(xi) of the Act is amended by striking out the word “or” at the end of clause (B), by adding the word “or” at the end of clause (C) and by adding the following after clause (C):

(D) air navigation equipment utilized in the provision of services under the *Civil Air Navigation Services Commercialization Act* or computer software the use of which is necessary for the operation of that equipment that is used by the payer for no other purpose; or

(7) Paragraph 212(1)(d) of the Act is amended by striking out the word “or” at the end of subparagraph (x), by adding the word “or” at the end of subparagraph (xi) and by adding the following after subparagraph (xi):

(xii) an amount to which subsection (5) would apply if that subsection were read without reference to “to the extent that the amount relates to that use or reproduction”;

(8) Subsection 212(1) of the Act is amended by adding the following after paragraph (h):

Restrictive
covenant
amount

(i) an amount that would, if the non-resident person had been resident in Canada throughout the taxation year in which the amount was received or receivable, be required by paragraph 56(1)(m) or subsection 56.4(2) to be included in computing the non-resident person’s income for the taxation year;

(9) Section 212 of the Act is amended by adding the following after subsection (2):

Exempt
dividends

(2.1) Subsection (2) does not apply to an amount paid or credited, by a borrower, under a securities lending arrangement if

(a) the amount is deemed by subparagraph 260(8)(c)(i) to be a dividend;

(b) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada; and

(c) the security that is transferred or lent to the borrower under the securities lending arrangement is a share of a class of the capital stock of a non-resident corporation.

(10) Subsection 212(3) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).

(11) Subsection 212(5) of the French version of the Act is replaced by the following:

Films
cinématograph
iques

(5) Toute personne non-résidente doit payer un impôt sur le revenu de 25 % sur toute somme qu’une personne résidant au Canada lui verse ou porte à son crédit, ou est réputée, en vertu de la partie I, lui verser ou porter à son crédit, au titre ou en paiement intégral ou partiel d’un droit sur les œuvres ci-après qui ont été ou doivent être utilisées ou reproduites au Canada, ou d’un droit d’utilisation de telles œuvres, dans la mesure où la somme se rapporte à cette utilisation ou reproduction :

a) un film cinématographique;

b) un film, une bande magnétoscopique ou d'autres procédés de reproduction à utiliser pour la télévision, sauf ceux utilisés uniquement pour une émission d'information produite au Canada.

(12) The portion of subsection 212(5) of the English version of the Act after paragraph (b) is replaced by the following:

that has been, or is to be, used or reproduced in Canada to the extent that the amount relates to that use or reproduction.

(13) Subsection 212(9) of the Act is amended by striking out the word "or" at the end of paragraph (b), by adding the word "or" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) a dividend or interest is received by a trust created under a reinsurance trust agreement, to which the Superintendent of Financial Institutions is a party, established in accordance with guidelines issued by the Superintendent relating to reinsurance arrangements with unregistered insurers

(14) Subsection 212(13) of the Act is amended by striking out the word "or" at the end of paragraph (e), by adding the word "or" at the end of paragraph (f) and by adding the following after paragraph (f):

(g) an amount to which paragraph (1)(i) applies if that amount affects, or is intended to affect, in any way whatever,

(i) the acquisition or provision of property or services in Canada,

(ii) the acquisition or provision of property or services outside Canada by a person resident in Canada, or

(iii) the acquisition or provision outside Canada of a taxable Canadian property,

(15) Subsection 212(13.2) of the Act is replaced by the following:

(13.2) For the purposes of this Part, a particular non-resident person, who in a taxation year pays or credits to another non-resident person an amount other than an amount to which subsection (13) applies, is deemed to be a person resident in Canada in respect of the portion of the amount that is deductible in computing the particular non-resident person's taxable income earned in Canada for any taxation year from a source that is neither a treaty-protected business nor a treaty-protected property.

(16) Subparagraph (b)(i) of the description of B in subsection 212(19) of the Act is replaced by the following:

(i) 10 times the greatest amount determined, under the laws of the province or provinces in which the taxpayer is a registered securities dealer, to be the capital employed by the taxpayer at the end of the day, and

(17) Subsection (1) applies to the 1998 and subsequent taxation years.

(18) Subsection (2) applies to arrangements made after 2002.

(19) Subsections (3) and (9) apply to securities lending arrangements entered into after May 1995, except that, in their application to arrangements made before 2002, each reference to “subparagraph 260(8)(c)(i)” in subparagraph 212(1)(b)(xiii) and paragraph 212(2.1)(a) of the Act, as enacted by subsections (3) and (9), is to be read as a reference to “subparagraph 260(8)(a)(i)”.

(20) Subsection (5) applies to amounts paid or credited after October 7, 2003.

(21) Subsection (6) applies to payments made after July 2003.

(22) Subsections (7), (11) and (12) apply to the 2000 and subsequent taxation years.

(23) Subsections (8) and (14) apply to amounts paid or credited after October 7, 2003.

(24) Subsection (10) applies to replacement obligations issued after 2000.

(25) Subsection (13) applies to amounts paid or credited after 2000 to non-resident persons.

(26) Subsection (15) applies to amounts paid or credited under obligations entered into after December 20, 2002.

(27) Subsection (16) applies to securities lending arrangements entered into after May 28, 1993.

178. Paragraph 214(3)(k) of the French version of the Act is replaced by the following:

k) le montant distribué par une fiducie au profit d'un athlète amateur à un moment donné, qui serait à inclure, en application du paragraphe 143.1(2), dans le calcul du revenu d'un particulier si la partie I s'appliquait est réputé avoir été payé au particulier à ce moment à titre de paiement relatif à une fiducie au profit d'un athlète amateur;

179. (1) The portion of subsection 216(1) of the Act before paragraph (a) is replaced by the following:

Alternatives re
rents and
timber
royalties

216. (1) If an amount has been paid during a taxation year to a non-resident person or to a partnership of which that person was a member as, on account of, in lieu of payment of or in satisfaction of, rent on real or immovable property in Canada or a timber royalty, that person may, within two years (or, if that person has filed an undertaking described in subsection (4) in respect of the year, within six months) after the end of the year, file a return of income under Part I for that year in prescribed form. On so filing and without affecting the liability of the non-resident person for tax otherwise payable under Part I, the non-resident person is, in lieu of paying tax under this Part on that amount, liable to pay tax under Part I for the year as though

(2) The portion of subsection 216(5) of the Act before paragraph (a) is replaced with the following:

Disposition by
non-resident

(5) If a person or a trust under which a person is a beneficiary has filed a return of income under Part I for a taxation year as permitted by this section or as required by section 150 and,

in computing the amount of the person's income under Part I an amount has been deducted under paragraph 20(1)(a), or is deemed by subsection 107(2) to have been allowed under that paragraph, in respect of property that is real property in Canada — or an interest therein — or an immovable in Canada — or a real right therein —, a timber resource property or a timber limit in Canada, the person shall file a return of income under Part I in prescribed form on or before the person's filing-due date for any subsequent taxation year in which the person is non-resident and in which the person, or a partnership of which the person is a member, disposes of that property or any interest, or for civil law any right, in it. On so filing and without affecting the person's liability for tax otherwise payable under Part I, the person is, in lieu of paying tax under this Part on any amount paid, or deemed by this Part to have been paid, in that subsequent taxation year in respect of any interest in, or for civil law any right in, that property to the person or to a partnership of which the person is a member, liable to pay tax under Part I for that subsequent taxation year as though

(3) Subsection 216(7) of the Act is repealed.

(4) Subsections (1) and (2) apply to taxation years that end after December 20, 2002.

180. (1) Paragraph 220(4.6)(a) of the French version of the Act is replaced by the following:

a) par le seul effet du paragraphe 107(5), les alinéas 107(2)a) à c) ne s'appliquent pas à une distribution de biens canadiens imposables effectuée par une fiducie au cours d'une année d'imposition (appelée « année de la distribution » au présent article);

(2) Paragraph 220(4.6)(c) of the French version of the Act is replaced by the following:

c) le ministre accepte, jusqu'à la date d'exigibilité du solde applicable à la fiducie pour une année d'imposition ultérieure, une garantie suffisante fournie par la fiducie, ou en son nom, au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année de la distribution pour le moins élevé des montants suivants :

(i) le montant obtenu par la formule suivante :

$$A - B - [(A - B)/A] \times C$$

où :

- A représente le total des impôts prévus par les parties I et I.1 qui seraient payables par la fiducie pour l'année de la distribution s'il n'était pas tenu compte de l'exclusion ou de la déduction de chaque montant visé à l'alinéa 161(7)a),
- B le total des impôts prévus par ces parties qui auraient été ainsi payables si les règles énoncées au paragraphe 107(2) (sauf celle portant sur le choix prévu à ce paragraphe) s'étaient appliquées à chaque distribution, effectuée par la fiducie au cours de l'année de la distribution, de biens auxquels s'applique l'alinéa a) (sauf les biens dont il est disposé ultérieurement avant le début de l'année ultérieure),

C le total des montants réputés par la présente loi ou une autre loi avoir été payés au titre de l'impôt de la fiducie en vertu de la présente partie pour l'année de la distribution,

(ii) si l'année ultérieure suit immédiatement l'année de la distribution, le montant déterminé selon le sous-alinéa (i); sinon, le montant déterminé selon le présent alinéa relativement à la fiducie pour l'année d'imposition précédant l'année ultérieure;

(3) The portion of subsection 220(4.61) of the French version of the Act before paragraph (a) is replaced by the following:

Restriction

(4.61) Malgré le paragraphe (4.6), le ministre est réputé, à un moment donné, ne pas avoir accepté de garantie aux termes de ce paragraphe pour l'année de la distribution d'une fiducie pour un montant supérieur à l'excédent éventuel du total visé à l'alinéa a) sur le total visé à l'alinéa b) :

(4) Paragraph 220(4.61)(b) of the French version of the Act is replaced by the following:

b) le total des impôts qui seraient déterminés selon l'alinéa a) si les alinéas 107(2)a) à c) s'étaient appliqués à chaque distribution effectuée par la fiducie au cours de l'année de biens auxquels s'applique l'alinéa (1)a).

181. (1) Paragraph 230(2)(a) of the French version of the Act is replaced by the following:

a) des renseignements sous une forme qui permet au ministre de déterminer s'il existe des motifs de révocation de l'enregistrement de l'organisme ou de l'association en vertu de la présente loi;

(2) Subsection 230(3) of the French version of the Act is replaced by the following:

Ordre du ministre quant à la tenue de registres

(3) Le ministre peut exiger de la personne qui n'a pas tenu les registres et livres de compte voulus pour l'application de la présente loi qu'elle tienne ceux qu'il spécifie. Dès lors, la personne doit tenir les registres et livres de compte qui sont ainsi exigés d'elle.

182. The portion of subsection 231.2(1) of the Act before paragraph (a) is replaced by the following:

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

183. (1) Paragraph (b) of the definition "gifting arrangement" in subsection 237.1(1) of the Act is replaced by the following:

(b) incur a limited-recourse debt, determined under subsection 143.2(6.1), that can reasonably be considered to relate to a gift to a qualified donee or a monetary contribution referred to in subsection 127(4.1);

(2) Subsection (1) applies in respect of gifts and monetary contributions made after 6:00 p.m. (EST) on December 5, 2003.

184. (1) Paragraph 241(3.2)(h) of the Act is replaced by the following:

(h) an application by the charity, and information filed in support of the application, for a designation, determination or decision by the Minister under subsection 149.1(5) (6.3), (7), (8) or (13).

(2) Paragraph 241(4)(d) of the Act is amended by striking out the word “or” at the end of subparagraph (xiii) and by adding the following after subparagraph (xiv):

(xv) to a person employed or engaged in the service of an office or agency, of the Government of Canada or of a province, whose mandate includes the provision of assistance (as defined in subsection 125.4(1) or 125.5(1)) in respect of film or video productions or film or video production services, solely for the purpose of the administration or enforcement of the program under which the assistance is offered, or

(xvi) to an official of the Canadian Radio-television and Telecommunications Commission, solely for the purpose of the administration or enforcement of a regulatory function of that Commission;

(3) Subparagraph 241(4)(e)(xii) of the Act is replaced by the following:

(xii) a provision contained in a tax treaty or in a listed international agreement;

(4) Section 241 of the Act is amended by adding the following after subsection (8):

(9) The Minister of Canadian Heritage may communicate or otherwise make available to the public, in any manner that that Minister considers appropriate, the following taxpayer information in respect of a Canadian film or video production certificate (as defined under subsection 125.4(1)) that has been issued or revoked:

(a) the title of the production for which the Canadian film or video production certificate was issued;

(b) the name of the taxpayer to whom the Canadian film or video production certificate was issued;

(c) the names of the producers of the production;

(d) the names of the individuals in respect of whom and places in respect of which that Minister has allotted points in respect of the production in accordance with regulations made for the purpose of section 125.4;

(e) the total number of points so allotted; and

(f) any revocation of the Canadian film or video production certificate.

(5) Subsection (1) applies to documents that are sent by the Minister of National Revenue, or that are filed or required to be filed with that Minister, after May 13, 2005.

185. (1) The definition “common-law partner” in subsection 248(1) of the Act is replaced by the following:

“common-law partner”
« conjoint de fait »

“common-law partner”, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited throughout the 12-month period that ends at that time, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

(2) The definition “dividend rental arrangement” in subsection 248(1) of the Act is replaced by the following:

“dividend rental arrangement”
« mécanisme de transfert de dividendes »

“dividend rental arrangement”, of a person or a partnership (each of which is referred to in this definition as the “person”),

(a) means any arrangement entered into by the person where it can reasonably be considered that

(i) the main reason for the person entering into the arrangement was to enable the person to receive a dividend on a share of the capital stock of a corporation, other than a dividend on a prescribed share or on a share described in paragraph (e) of the definition “term preferred share” in this subsection or an amount deemed by subsection 15(3) to be received as a dividend on a share of the capital stock of a corporation, and

(ii) under the arrangement someone other than that person bears the risk of loss or enjoys the opportunity for gain or profit with respect to the share in any material respect, and

(b) includes, for greater certainty, any arrangement under which

(i) a corporation at any time receives on a particular share a taxable dividend that would, if this Act were read without reference to subsection 112(2.3), be deductible in computing its taxable income or taxable income earned in Canada for the taxation year that includes that time, and

(ii) the corporation or a partnership of which the corporation is a member is obligated to pay to another person or partnership an amount

(A) that is compensation for

(I) the dividend described in subparagraph (i),

(II) a dividend on a share that is identical to the particular share, or

(III) a dividend on a share that, during the term of the arrangement, can reasonably be expected to provide to a holder of the share the same or substantially the same proportionate risk of loss or opportunity for gain as the particular share, and

(B) that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person or partnership, as the case may be, as a taxable dividend;

(3) Subparagraph (b)(i) of the definition “disposition” in subsection 248(1) of the Act is replaced by the following:

(i) where the property is a share, bond, debenture, note, certificate, mortgage, hypothecary claim, agreement of sale or similar property, or an interest, or for civil law a right, in it, the property is in whole or in part redeemed, acquired or cancelled,

(4) Subparagraphs (f)(i) and (ii) of the definition “disposition” in subsection 248(1) of the Act are replaced by the following:

(i) the transferor and the transferee are trusts that are, at the time of the transfer, resident in Canada,

(5) The definition “disposition” in subsection 248(1) of the Act is amended by striking out the word “and” at the end of paragraph (l), by adding the word “and” at the end of paragraph (m) and by adding the following after paragraph (m):

(n) a redemption, an acquisition or a cancellation of a share or of a right to acquire a share (which share or which right, as the case may be, is referred to in this paragraph as the “security”) of the capital stock of a corporation (referred to in this paragraph as the “issuing corporation”) held by another corporation (referred to in this paragraph as the “disposing corporation”) if

(i) the redemption, acquisition or cancellation occurs as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this paragraph as the “new corporation”),

(ii) the merger or combination is

(A) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) does not apply,

(B) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) as the parent and the subsidiary, respectively, or

(C) a foreign merger (within the meaning assigned by subsection 87(8.1)), and

(iii) either

(A) the disposing corporation receives no consideration for the security, or

(B) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1)), the disposing corporation receives no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, becomes property of the new corporation;

(6) Paragraphs (d) and (e) of the definition “foreign resource property” in subsection 248(1) of the Act are replaced by the following:

(d) any right to a rental or royalty computed by reference to the amount or value of production from an oil or gas well in that country, or from a natural accumulation of petroleum or natural gas in that country, if the payer of the rental or royalty has an interest in, or for civil law a right in, the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

(e) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in that country, if the payer of the rental or royalty has an interest in, or for civil law a right in, the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

(7) Paragraph (g) of the definition “foreign resource property” in subsection 248(1) of the Act is replaced by the following:

(g) a right to or an interest in — or for civil law a right in or to — any property described in any of paragraphs (a) to (f), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership;

(8) The portion of the definition “former business property” in subsection 248(1) of the Act before paragraph (a) is replaced by the following:

“former
business
property”
« ancien bien
d'entreprise »

“former business property”, in respect of a taxpayer, means a capital property of the taxpayer that was used by the taxpayer or a person related to the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real or immovable property of the taxpayer, an interest of the taxpayer in real property, a right of the taxpayer in an immovable or a property that is the subject of a valid election under subsection 13(4.2), but does not include

(9) Paragraph (d) of the definition “activités de recherche scientifique et de développement expérimental” in subsection 248(1) of the French version of the Act is replaced by the following:

d) les travaux entrepris par le contribuable ou pour son compte relativement aux travaux de génie, à la conception, à la recherche opérationnelle, à l'analyse mathématique, à la programmation informatique, à la collecte de données, aux essais et à la recherche psychologique, lorsque ces travaux sont proportionnels aux besoins des travaux visés aux

alinéas *a*), *b*) ou *c*) qui sont entrepris au Canada par le contribuable ou pour son compte et servent à les appuyer directement.

(10) Paragraph (g) of the definition “fiducie pour l’environnement admissible” in subsection 248(1) of the French version of the Act is replaced by the following:

g) un montant a été distribué par elle avant le 23 février 1994;

(11) Subparagraph (h)(ii) of the definition “fiducie pour l’environnement admissible” in subsection 248(1) of the French version of the Act is replaced by the following:

(ii) un montant a été distribué par elle avant le 19 février 1997,

(12) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

“listed
international
agreement”
« *accord
international
désigné* »

“listed international agreement” means

(a) the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, and

(b) the *Convention between the Government of Canada and the Government of the United Mexican States for the Exchange of Information with Respect to Taxes*, signed at Mexico City on March 16, 1990;

“qualifying
trust annuity”
« *rente
admissible de
fiducie* »

“qualifying trust annuity” has the meaning assigned by subsection 60.011(2);

“specified
proportion”
« *proportion
déterminée* »

“specified proportion”, of a member of a partnership for a fiscal period of the partnership, means the proportion that the member’s share of the total income or loss of the partnership for the partnership’s fiscal period is of the partnership’s total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of \$1,000,000;

(13) Section 248 of the Act is amended by adding the following after subsection (1):

Non-disposi-
tion before
December 24,
1998

(1.1) A redemption, an acquisition or a cancellation, at any particular time after 1971 and before December 24, 1998, of a share or of a right to acquire a share (which share or which right, as the case may be, is referred to in this subsection as the “security”) of the capital stock of a corporation (referred to in this subsection as the “issuing corporation”) held by another corporation (referred to in this subsection as the “disposing corporation”) is not a disposition (within the meaning of the definition “disposition” in section 54 as that section read in its application to transactions and events that occurred at the particular time) of the security if

(a) the redemption, acquisition or cancellation occurred as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this subsection as the “new corporation”);

(b) the merger or combination is

(i) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time did not apply,

(ii) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) (if in force, and as it read, at the particular time) as the parent and the subsidiary, respectively, or

(iii) a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time); and

(c) either

(i) the disposing corporation received no consideration for the security, or

(ii) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time), the disposing corporation received no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, became property of the new corporation.

(14) Section 248 of the Act is amended by adding the following after subsection (3):

(3.1) Subsection (3) does not apply in respect of a usufruct or a right of use of an immovable in circumstances where a taxpayer disposes of the bare ownership of the immovable by way of a gift to a donee described in the definition “total charitable gifts”, “total Crown gifts” or “total ecological gifts” in subsection 118.1(1) and retains, for life, the usufruct or the right of use.

(15) Paragraphs 248(8)(a) and (b) of the French version of the Act are replaced by the following:

a) un transfert, une distribution ou une acquisition de biens effectué en vertu du testament ou autre acte testamentaire d'un contribuable ou de son époux ou conjoint de fait, par suite d'un tel testament ou acte ou par l'effet de la loi en cas de succession *ab intestat* du contribuable ou de son époux ou conjoint de fait, est considéré comme un transfert, une distribution ou une acquisition de biens effectué par suite du décès du contribuable ou de son époux ou conjoint de fait, selon le cas;

b) un transfert, une distribution ou une acquisition de biens effectué par suite d'une renonciation ou d'un abandon par une personne qui était bénéficiaire en vertu du testament ou autre acte testamentaire d'un contribuable ou de son époux ou conjoint de fait, ou qui

était héritier *ab intestat* de l'un ou l'autre, est considéré comme un transfert, une distribution ou une acquisition de biens effectué par suite du décès du contribuable ou de son époux ou conjoint de fait, selon le cas;

(16) Subsection 248(16) of the Act is replaced by the following:

Goods and
services tax —
input tax credit
and rebate

(16) For the purposes of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax credit or rebate with respect to the goods and services tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(a) where the amount was claimed by the taxpayer as an input tax credit in a return under Part IX of the *Excise Tax Act* for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the goods and services tax in respect of the input tax credit was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is greater than \$500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax credit at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is \$500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer ends at least 120 days after the time that the input tax credit was claimed; or

(b) where the amount was claimed as a rebate with respect to the goods and services tax, at the time the amount was received or credited.

(17) Section 248 of the Act is amended by adding the following after subsection (16):

Quebec input
tax refund and
rebate

(16.1) For the purpose of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax refund or a rebate with respect to the Quebec

sales tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(a) where the amount was claimed by the taxpayer as an input tax refund in a return under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the Quebec sales tax in respect of the input tax refund was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is greater than \$500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax refund at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is \$500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer ends at least 120 days after the time that the input tax refund was claimed; or

(b) where the amount was claimed as a rebate with respect to the Quebec sales tax, at the time the amount was received or credited.

(18) The portion of subsection 248(17) of the Act before the portion enclosed by quotation marks is replaced by the following:

(17) If the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle or aircraft is determined with reference to subsection 202(4) of that Act, subparagraphs (16)(a)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:

(19) Section 248 of the Act is amended by adding the following after subsection (17):

Application of
subsection
(16) to
passenger
vehicles and
aircraft

Application of subsection (16.1) to passenger vehicles and aircraft	<p>(17.1) If the input tax refund of a taxpayer under <i>An Act respecting the Québec sales tax</i>, R.S.Q., c. T-0.1, in respect of a passenger vehicle or aircraft is determined with reference to section 252 of that Act, subparagraphs (16.1)(a)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:</p>
	<p>“(i) at the beginning of the first taxation year or fiscal period of the taxpayer that begins after the end of the taxation year or fiscal period, as the case may be, in which the Quebec sales tax in respect of such property was considered for the purposes of determining the input tax refund to be payable, if the tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, or</p> <p>(ii) if no such tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, at the end of the reporting period; or”.</p>
Input tax credit on assessment	<p>(17.2) An amount in respect of an input tax credit that is deemed by subsection 296(5) of the <i>Excise Tax Act</i> to have been claimed in a return or application filed under Part IX of that Act is deemed to have been so claimed for the reporting period under that Act that includes the time when the Minister makes the assessment referred to in that subsection.</p>
Quebec input tax refund on assessment	<p>(17.3) An amount in respect of an input tax refund that is deemed by section 30.5 of <i>An Act respecting the Ministère du Revenu</i>, R.S.Q., c. M-31, to have been claimed is deemed to have been so claimed for the reporting period under <i>An Act respecting the Québec sales tax</i>, R.S.Q., c. T-0.1, that includes the day on which an assessment is issued to the taxpayer indicating that the refund has been allocated under that section 30.5.</p>
<p>(20) Section 248 of the Act is amended by adding the following after subsection (18).</p>	
Repayment of Quebec input tax refund	<p>(18.1) For the purposes of this Act, if an amount is added at a particular time in determining the net tax of a taxpayer under <i>An Act respecting the Québec sales tax</i>, R.S.Q., c. T-0.1, in respect of an input tax refund relating to property or service that had been previously deducted in determining the net tax of the taxpayer, that amount is deemed to be assistance repaid at the particular time in respect of the property or service under a legal obligation to repay all or part of that assistance.</p>
<p>(21) Subsection 248(25.1) of the Act is replaced by the following:</p>	
Trust-to-trust transfers	<p>(25.1) Where at any time a particular trust transfers property to another trust (other than a trust governed by a registered retirement savings plan or by a registered retirement income fund) in circumstances to which paragraph (f) of the definition “disposition” in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(f), the other trust is deemed to be after that time the same trust as, and a continuation of, the particular trust, and for greater certainty, if the property was deemed to be taxable Canadian property of the particular trust by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the other trust.</p>
<p>(22) Subparagraph 248(25.3)(c)(i) of the Act is replaced by the following:</p>	

(i) the particular unit is capital property and the amount is not proceeds of disposition of a capital interest in the trust, or

(23) Section 248 of the Act is amended by adding the following after subsection (29):

Intention to
give

(30) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

(a) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or

(b) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.

Eligible
amount of gift
or monetary
contribution

(31) The eligible amount of a gift or monetary contribution is the amount by which the fair market value of the property that is the subject of the gift or monetary contribution exceeds the amount of the advantage, if any, in respect of the gift or monetary contribution.

Amount of
advantage

(32) The amount of the advantage in respect of a gift or monetary contribution by a taxpayer is the total of

(a) the total of all amounts, other than an amount referred to in paragraph (b), each of which is the value, at the time the gift or monetary contribution is made, of any property, service, compensation, use or other benefit that the taxpayer, or a person or partnership who does not deal at arm's length with the taxpayer, has received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain, or enjoy

(i) that is consideration for the gift or monetary contribution,

(ii) that is in gratitude for the gift or monetary contribution, or

(iii) that is in any other way related to the gift or monetary contribution, and

(b) the limited-recourse debt, determined under subsection 143.2(6.1), in respect of the gift or monetary contribution at the time the gift or monetary contribution is made.

Cost of
property
acquired by
donor

(33) The cost to a taxpayer of a property, acquired by the taxpayer in circumstances where subsection (32) applies to include the value of the property in computing the amount of the advantage in respect of a gift or monetary contribution, is equal to the fair market value of the property at the time the gift or monetary contribution is made.

Repayment of
limited-recour
se debt

(34) If at any time in a taxation year a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse debt referred to in subsection 143.2(6.1) (in this subsection referred to as the "former limited-recourse debt") in respect of a gift or monetary contribution (in this subsection referred to as the "original gift" or "original monetary contribution", respectively, as the case may be) of the taxpayer (otherwise than by way of assignment or transfer of a guarantee, security or similar indemnity or covenant, or by way of a payment in respect of which any taxpayer referred to in subsection 143.2(6.1) has incurred an indebtedness that would be a limited-re-

course debt referred to in that subsection if that indebtedness were in respect of a gift or monetary contribution made at the time that that indebtedness was incurred), the following rules apply:

(a) if the former limited-recourse debt is in respect of the original gift, for the purposes of sections 110.1 and 118.1, the taxpayer is deemed to have made in the taxation year a gift to a qualified donee, the eligible amount of which deemed gift is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original gift, if the total of all such repaid amounts paid at or before that time were paid immediately before the original gift was made,

exceeds

(ii) the total of

(A) the eligible amount of the original gift, and

(B) the eligible amount of all other gifts deemed by this paragraph to have been made before that time in respect of the original gift; and

(b) if the former limited-recourse debt is in respect of the original monetary contribution, for the purposes of subsection 127(3), the taxpayer is deemed to have made in the taxation year a monetary contribution referred to in that subsection, the eligible amount of which is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original monetary contribution, if the total of all such repaid amounts paid at or before that time were paid immediately before the original monetary contribution was made,

exceeds

(ii) the total of

(A) the eligible amount of the original monetary contribution, and

(B) the eligible amount of all other monetary contributions deemed by this paragraph to have been made before that time in respect of the original monetary contribution.

(35) For the purposes of subsection (31), paragraph 69(1)(b) and subsections 110.1(2.1) and (3) and 118.1(5.4) and (6), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is deemed to be the lesser of the fair market value of the property otherwise determined and the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made if

(a) the taxpayer acquired the property under a gifting arrangement that is a tax shelter as defined in subsection 237.1(1); or

(b) except where the gift is made as a consequence of the taxpayer's death,

(i) the taxpayer acquired the property less than 3 years before the day that the gift is made, or

Deemed fair
market value

(ii) the taxpayer acquired the property less than 10 years before the day that the gift is made and it is reasonable to conclude that, at the time the taxpayer acquired the property, one of the main reasons for the acquisition was to make a gift of the property to a qualified donee.

Non-arm's
length
transaction

(36) If a taxpayer acquired a property that is the subject of a gift to which subsection (35) applies because of subparagraph (35)(b)(i) or (ii) and the property was, at any time within the 3-year or 10-year period, respectively, that ends when the gift was made, acquired by a person or partnership with whom the taxpayer does not deal at arm's length, for the purpose of applying subsection (35), the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made is deemed to be equal to the lowest amount that is the cost, or in the case of capital property, the adjusted cost base, to the taxpayer or any of those persons or partnerships immediately before the property was disposed of by that person or partnership.

Non-applica-
tion of
subsection
(35)

(37) Subsection (35) does not apply to a gift

(a) of inventory;

(b) of real property or an immovable situated in Canada;

(c) of an object referred to in subparagraph 39(1)(a)(i.1);

(d) of property to which paragraph 38(a.1) or (a.2) would apply, if those paragraphs were read without reference to the expression "other than a private foundation";

(e) of a share of the capital stock of a corporation if

(i) the share was issued by the corporation to the donor,

(ii) immediately before the gift, the corporation was controlled by the donor, a person related to the donor or a group of persons each of whom is related to the donor, and

(iii) subsection (35) would not have applied in respect of the consideration for which the share was issued had that consideration been donated by the donor to the qualified donee when the share was so donated; or

(f) by a corporation of property if

(i) the property was acquired by the corporation in circumstances to which subsection 85(1) or (2) applied,

(ii) immediately before the gift, the shareholder from whom the corporation acquired the property controlled the corporation or was related to a person or each member of a group of persons that controlled the corporation, and

(iii) subsection (35) would not have applied in respect of the property had the property not been transferred to the corporation and had the shareholder made the gift to the qualified donee when the corporation so made the gift.

Artificial transactions	<p>(38) The eligible amount of a particular gift of property by a taxpayer is nil if it can reasonably be concluded that the particular gift relates to a transaction or series of transactions</p>
	<p>(a) one of the purposes of which is to avoid the application of subsection (35) to a gift of any property; or</p> <p>(b) that would, if this Act were read without reference to this paragraph, result in a tax benefit to which subsection 245(2) applies.</p>
Substantive gift	<p>(39) If a taxpayer disposes of a property (in this subsection referred to as the “substantive gift”) that is a capital property or an eligible capital property of the taxpayer, to a recipient that is a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in the <i>Canada Elections Act</i>, or that is a qualified donee, subsection (35) would have applied in respect of the substantive gift if it had been the subject of a gift by the taxpayer to a qualified donee, and all or a part of the proceeds of disposition of the substantive gift are (or are substituted, directly or indirectly in any manner whatever, for) property that is the subject of a gift or monetary contribution by the taxpayer to the recipient or any person dealing not at arm’s length with the recipient, the following rules apply:</p>
	<p>(a) for the purpose of subsection (31), the fair market value of the property that is the subject of the gift or monetary contribution made by the taxpayer is deemed to be that proportion of the lesser of the fair market value of the substantive gift and the cost, or if the substantive gift is capital property of the taxpayer, the adjusted cost base, of the substantive gift to the taxpayer immediately before the disposition to the recipient, that the fair market value otherwise determined of the property that is the subject of the gift or monetary contribution is of the proceeds of disposition of the substantive gift;</p> <p>(b) if the substantive gift is capital property of the taxpayer, for the purpose of the definitions “proceeds of disposition” of property in subsection 13(21) and section 54, the sale price of the substantive gift is to be reduced by the amount by which the fair market value of the property that is the subject of the gift (determined without reference to this section) exceeds the fair market value determined under paragraph (a); and</p> <p>(c) if the substantive gift is eligible capital property of the taxpayer, the amount determined under paragraph (a) in the description of E in the definition “cumulative eligible capital” in subsection 14(5) in respect of the substantive gift is to be reduced by the amount by which the fair market value of the property that is the subject of the gift (determined without reference to this section) exceeds the fair market value determined under paragraph (a).</p>
Reasonable inquiry	<p>(40) A person shall not issue a receipt referred to in subsection 110.1(2), 118.1(2) or 127(3), with a stated eligible amount in excess of \$5,000, unless the person has made reasonable inquiry as to the existence of any circumstances in respect of which subsection (31), (35), (36), (38) or (39) requires that the eligible amount of the gift or monetary contribution be less than the fair market value, determined without reference to subsection (35), and</p>

subsections 110.1(3) and 118.1(6), of the property that is the subject of the gift or monetary contribution.

(41) Notwithstanding subsection (31), the eligible amount of a gift or monetary contribution made by a taxpayer is nil if the taxpayer does not — before a receipt referred to in subsection 110.1(2), 118.1(2) or 127(3), as the case may be, is issued in respect of the gift or monetary contribution — inform the qualified donee or the recipient, as the case may be, of any circumstances in respect of which subsection (31), (35), (36), (38) or (39) requires that the eligible amount of the gift or monetary contribution be less than the fair market value, determined without reference to subsection (35) and subsections 110.1(3) and 118.1(6), of the property that is the subject of the gift or monetary contribution.

(24) Subsection (1) applies in determining whether a person is, for the 2001 and subsequent taxation years, a common-law partner of a taxpayer, except that subsection does not apply to so determine whether a person is a common-law partner of a taxpayer for a taxation year to which a valid election, made under section 144 of the *Modernization of Benefits and Obligations Act*, applied before February 27, 2004. However, on and after February 27, 2004, no such election may be made to affect a current or subsequent taxation year.

(25) Subsection (2) applies

(a) to arrangements made after December 20, 2002; and

(b) to an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement jointly so elect in writing and file the election with the Minister of National Revenue within 90 days after the day on which this Act is assented to, except that the reference to “subsection 260(5.1)” in clause (b)(ii)(B) of the definition “dividend rental arrangement” in subsection 248(1) of the Act, as enacted by subsection (2), is to be, in the application of that definition to any of those arrangements made before 2002, read as a reference to “subsection 260(5)”.

(26) For arrangements made after 2001 and before December 21, 2002 other than an arrangement to which paragraph (25)(b) applies, the portion of paragraph (d) of the definition “dividend rental arrangement” in subsection 248(1) of the Act after subparagraph (iii) is to be read as follows:

that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person as a taxable dividend;

(27) Subsections (3) and (5) apply to redemptions, acquisitions and cancellations that occur after December 23, 1998 and, where a particular redemption, acquisition or cancellation occurs before December 21, 2002, any assessment of a taxpayer’s tax, interest and penalties payable under the Act for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsections 152(4) to (5) of the Act, be made that is necessary to take into account the application of subsections (3) and (5).

(28) Subsection (4) applies to transfers that occur after February 27, 2004.

(29) Subsections (6) and (7) apply to property acquired after December 20, 2002.

(30) Subsection (8) applies in respect of dispositions and terminations that occur after December 20, 2002.

(31) The definition “qualifying trust annuity” in subsection 248(1) of the Act, as enacted by subsection (12), applies after 1988.

(32) The definition “specified proportion” in subsection 248(1) of the Act, as enacted by subsection (12), applies after December 20, 2002.

(33) In applying subsection 248(1.1) of the Act, as enacted by subsection (13), to a particular redemption, acquisition or cancellation, any assessment of a taxpayer’s tax, interest and penalties payable under the Act for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsections 152(4) to (5) of the Act, be made that is necessary to take into account the application of subsection (13).

(34) Subsection (14) applies to dispositions that occur after ANNOUNCEMENT DATE.

(35) Subsections (16) and (18), and subsection 248(17.2) of the Act, as enacted by subsection (19), apply in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

(36) Subsection (17) and subsections 248(17.1) and (17.3) of the Act, as enacted by subsection (19), apply in respect of input tax refunds and rebates that become eligible to be claimed in taxation years that begin after February 27, 2004.

(37) Subsection (20) applies after February 27, 2004.

(38) Subsection (21) applies in respect of transfers that occur after December 23, 1998.

(39) Subsection (22) applies to units issued after December 20, 2002.

(40) Subsection (23) applies in respect of gifts and monetary contributions made after December 20, 2002, except that

(a) subsection 248(32) of the Act, as enacted by subsection (23), is to be read without reference to

(i) its paragraph (b) in respect of gifts and monetary contributions made before February 19, 2003, and

(ii) its subparagraph (a)(iii) in respect of gifts and monetary contributions made before 6:00 p.m. (EST) on December 5, 2003;

(b) subsection 248(34) of the Act, as enacted by subsection (23), does not apply in respect of gifts and monetary contributions made before February 19, 2003;

(c) subsections 248(35), (37) and (38) of the Act, as enacted by subsection (23), do not apply in respect of gifts made before 6:00 p.m. (EST) on December 5, 2003 and,

in respect of gifts made after that time but before ANNOUNCEMENT DATE, that subsection 248(38) of the Act is to be read as follows:

(38) If it can reasonably be concluded that one of the reasons for a series of transactions, that includes a disposition or acquisition of a property of a taxpayer that is the subject of a gift by the taxpayer, is to increase the amount that would be deemed by subsection (35) to be the fair market value of the property, the cost of the property for the purpose of that subsection is deemed to be the lowest cost to the taxpayer to acquire that property or an identical property at any time.

(d) subsection 248(36) of the Act, as enacted by subsection (23), does not apply in respect of gifts or monetary contributions made before ANNOUNCEMENT DATE;

(e) subsection 248(39) of the Act, as enacted by subsection (23), does not apply in respect of gifts or monetary contributions made before February 27, 2004; and

(f) subsections 248(40) and (41) of the Act, as enacted by subsection (23), do not apply in respect of gifts and monetary contributions made before 2006.

186. (1) Subsection 249(1) of the Act is replaced by the following:

Definition of
"taxation year"

249. (1) Except as expressly otherwise provided in this Act, a "taxation year" is

(a) in the case of a corporation, a fiscal period;

(b) in the case of an individual (other than a testamentary trust), a calendar year; and

(c) in the case of a testamentary trust, the period for which the accounts of the trust are made up for purposes of assessment under this Act.

References to
calendar year

(1.1) When a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or taxation years that coincide with, or that end in, that calendar year.

(2) Section 249 of the Act is amended by adding the following after subsection (4):

Testamentary
trusts

(5) The period for which the accounts of a testamentary trust are made up for the purposes of an assessment under this Act may not exceed 12 months and no change in the time when such a period ends may be made for the purposes of this Act without the concurrence of the Minister.

Loss of
testamentary
trust status

(6) If at a particular time after December 20, 2002 a transaction or event, described in any of paragraphs (b) to (d) of the definition "testamentary trust" in subsection 108(1), occurs and as a result of that occurrence a trust or estate is not a testamentary trust, the following rules apply:

(a) the fiscal period for a business or property of the trust or estate that would, if this Act were read without reference to this subsection and those paragraphs, have included the particular time is deemed to have ended immediately before the particular time;

(b) the taxation year of the trust or estate that would, if this Act were read without reference to this subsection and those paragraphs, have included the particular time is deemed to have ended immediately before the particular time;

(c) a new taxation year of the trust or estate is deemed to have started at the particular time; and

(d) in determining the fiscal period of the trust or estate after the particular time, the trust or estate is deemed not to have established a fiscal period before that time.

(3) Subsection (1), and subsection 249(5) of the Act, as enacted by subsection (2), apply after December 20, 2002.

(4) Subsection 249(6) of the Act, as enacted by subsection (2), applies after ANNOUNCEMENT DATE and, if a trust or estate so elects in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which this Act is assented to, it also applies to that trust or estate, as the case may be, after December 20, 2002.

187. (1) Paragraph 251(1)(c) of the Act is replaced by the following:

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

(2) Subsection (1) applies after December 23, 1998.

188. (1) In subsection 252(3) of the Act, the expression "subparagraph 210(c)(ii) and subsections 248(22) and (23)" is replaced by the expression "subsections 210(1) and 248(22) and (23)".

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

189. (1) Section 253.1 of the Act is replaced by the following:

253.1 For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b), 146.1(2.1)(c) and 149(1)(o.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

(2) Subsection (1) applies after 1997 except that, for taxation years that end after December 16, 1999 and before 2003, section 253.1 of the Act, as enacted by subsection (1), is to be read as follows:

253.1 For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b), 146.1(2.1)(c) and 149(1)(o.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust or corporation is a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member is deemed

(a) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the partnership; and

(b) not to carry on any business or other activity of the partnership.

190. (1) Subparagraph 256(6)(b)(ii) of the French version of the Act is replaced by the following:

(ii) soit à des actions du capital-actions de la société contrôlée qui appartenaient à l'entité dominante au moment donné et qui, selon la convention ou l'arrangement, devaient être rachetées par la société contrôlée ou achetées par la personne ou le groupe de personnes visé au sous-alinéa a)(ii).

(2) Subparagraph 256(7)(a)(i) of the Act is amended by striking out the word “or” at the end of clause (C) and by adding the following after clause (D):

(E) a corporation on a distribution (within the meaning assigned by subsection 55(1)) by a specified corporation (within the meaning assigned by that subsection) if a dividend, to which subsection 55(2) does not apply because of paragraph 55(3)(b), is received in the course of the reorganization in which the distribution occurs,

(3) Paragraph 256(7)(a) of the Act is amended by adding the word “or” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) the acquisition at any time of shares of the particular corporation if

(A) the acquisition of those shares would otherwise result in the acquisition of control of the particular corporation at that time by a related group of persons, and

(B) each member of each group of persons that controls the particular corporation at that time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular corporation immediately before that time;

(4) Paragraph 256(7)(e) of the Act is replaced by the following:

(e) control of a particular corporation and of each corporation controlled by it immediately before a particular time is deemed not to have been acquired at the particular time by a corporation (in this paragraph referred to as the “acquiring corporation”) if at the particular time, the acquiring corporation acquires shares of the particular corporation’s capital stock for consideration that consists solely of shares of the acquiring corporation’s capital stock, and if

(i) immediately after the particular time

(A) the acquiring corporation owns all the shares of each class of the particular corporation’s capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(c.8)),

(B) the acquiring corporation is not controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation is not less than 95% of the fair market value of all of the assets of the acquiring corporation, or

(ii) any of clauses (i)(A) to (C) do not apply and the acquisition occurs as part of a plan of arrangement that, on completion, results in

(A) the acquiring corporation (or a new corporation that is formed on an amalgamation of the acquiring corporation and a subsidiary wholly-owned corporation of the acquiring corporation) owning all the shares of each class of the particular corporation's capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(c.8)),

(B) the acquiring corporation (or the new corporation) not being controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation (or the new corporation) being not less than 95% of the fair market value of all of the assets of the acquiring corporation (or the new corporation).

(5) Subsections (2) and (3) apply to acquisitions of shares that occur after 2000.

(6) Subsection (4) applies in respect of shares acquired after 1999.

191. (1) The portion of subsection 259(1) of the Act before paragraph (a) is replaced by the following:

259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1) and 146.3(7), (8) and (9) and Parts X, X.2 and XI.1, if at any time a taxpayer that is a registered investment or that is described in paragraph 149(1)(r), (s), (u) or (x) acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

(2) Subsection (1) applies to the 2000 and subsequent taxation years, except that in its application to taxation years that begin before 2005, the portion of subsection 259(1) of the Act before paragraph (a), as enacted by subsection (1), is to be read as follows:

259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, if at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

192. (1) The definition "qualified security" in subsection 260(1) of the Act is amended by striking out the word "or" at the end of paragraph (c), by adding the word "or" at the end of paragraph (d) and by adding the following after paragraph (d):

(e) a qualified trust unit;

(2) Paragraph (a) of the definition "securities lending arrangement" in subsection 260(1) of the Act is replaced by the following:

(a) a person (in this section referred to as the “lender”) transfers or lends at any particular time a qualified security to another person (in this section referred to as the “borrower”),

(3) Paragraph (c) of the definition “securities lending arrangement” in subsection 260(1) of the Act is replaced by the following:

(c) the borrower is obligated to pay to the lender amounts equal to and as compensation for all amounts, if any, paid on the security that would have been received by the borrower if the borrower had held the security throughout the period that begins after the particular time and that ends at the time an identical security is transferred or returned to the lender,

(4) The definition “securities lending arrangement” in subsection 260(1) of the Act is amended by adding the word “and” at the end of paragraph (d) and by adding the following after that paragraph:

(e) if the lender and the borrower do not deal with each other at arm’s length, it is not intended that the arrangement, nor any series of securities lending arrangements, loans or other transactions of which the arrangement is a part, be in effect for more than 270 days,

(5) Subsection 260(1) of the Act is amended by adding the following in alphabetical order:

“dealer compensation payment” « paiement compensatoire (courtier) »	“dealer compensation payment” means an amount received by a taxpayer as compensation, for an underlying payment, (a) from a registered securities dealer resident in Canada who paid the amount in the ordinary course of a business of trading in securities, or (b) in the ordinary course of the taxpayer’s business of trading in securities, where the taxpayer is a registered securities dealer resident in Canada;
“qualified trust unit” « unité de fiducie déterminée »	“qualified trust unit” means a unit of a mutual fund trust that is listed on a prescribed stock exchange;
“security distribution” « paiement de titre »	“security distribution” means an amount that is (a) an underlying payment, or (b) an SLA compensation payment, or a dealer compensation payment, that is deemed by subsection (5.1) to be an amount received as an amount described by any of paragraphs (5.1)(a) to (c);

“SLA compensation payment”
« paiement compensatoire (MPVM) »

“SLA compensation payment” means an amount paid pursuant to a securities lending arrangement as compensation for an underlying payment;

“underlying payment”
« paiement sous-jacent »

“underlying payment” means an amount paid on a qualified security by the issuer of the security.

(6) Subsections 260(5) and (6) of the Act are replaced by the following:

Where subsection (5.1) applies

(5) Subsection (5.1) applies to a taxpayer for a taxation year in respect of a particular amount (other than an amount received as proceeds of disposition or an amount received by a person under an arrangement where it may reasonably be considered that one of the main reasons for the person entering into the arrangement was to enable the person to receive an SLA compensation payment or a dealer compensation payment that would be deductible in computing the taxable income, or not included in computing the income, for any taxation year of the person) received by the taxpayer in the taxation year

(a) as an SLA compensation payment,

(i) from a person resident in Canada, or

(ii) from a non-resident person who paid the particular amount in the course of carrying on business in Canada through a permanent establishment as defined by regulation; or

(b) as a dealer compensation payment.

Deemed character of compensation payments

(5.1) If this subsection applies in respect of a particular amount received by a taxpayer in a taxation year as an SLA compensation payment or as a dealer compensation payment, the particular amount is deemed, to the extent of the underlying payment to which the amount relates, to have been received by the taxpayer in the taxation year as,

(a) where the underlying payment is a taxable dividend paid on a share of the capital stock of a public corporation (other than an underlying payment to which paragraph (b) applies), a taxable dividend on the share;

(b) where the underlying payment is paid by a trust on a qualified trust unit issued by the trust,

(i) an amount of the trust's income that was, to the extent that subsection 104(13) applied to the underlying payment,

(A) paid by the trust to the taxpayer as a beneficiary under the trust, and

(B) designated by the trust in respect of the taxpayer to the extent of a valid designation, if any, by the trust under this Act in respect of the recipient of the underlying payment, and

(ii) to the extent that the underlying payment is a distribution of a property from the trust, a distribution of that property from the trust; or

(c) in any other case, interest.

Deductibility

(6) In computing the income of a taxpayer under Part I from a business or property for a taxation year, there may be deducted a particular amount, paid by the taxpayer in the year as an SLA compensation payment or as a dealer compensation payment, that is equal to

(a) if the taxpayer is a registered securities dealer and the particular amount is deemed by subsection (5.1) to have been received as a taxable dividend, no more than 2/3 of the particular amount; or

(b) if the particular amount is in respect of an amount other than an amount that is, or is deemed by subsection (5.1) to have been, received as a taxable dividend,

(i) where the taxpayer disposes of the borrowed security and includes the gain or loss, if any, from the disposition in computing its income from a business, the particular amount, or

(ii) in any other case, the lesser of

(A) the particular amount, and

(B) the amount, if any, in respect of the security distribution to which the SLA compensation payment or dealer compensation payment relates that is included in computing the income, and not deducted in computing the taxable income, for any taxation year of the taxpayer or of any person to whom the taxpayer is related.

(7) Paragraph 260(6.1)(a) of the Act is replaced by the following:

(a) the total of all amounts each of which is an amount that the corporation becomes obligated in the taxation year to pay to another person under an arrangement described in paragraph (b) of the definition “dividend rental arrangement” in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend; and

(8) Subsections 260(7) and (8) of the Act are replaced by the following:

Dividend
refund

(7) For the purpose of section 129, if a corporation pays an amount for which no deduction in computing the corporation’s income may be claimed under subsection (6.1) and subsection (5.1) deems the amount to have been received by another person as a taxable dividend,

(a) the corporation is deemed to have paid the amount as a taxable dividend, where the corporation is not a registered securities dealer; and

(b) the corporation is deemed to have paid 1/3 of the amount as a taxable dividend, where the corporation is a registered securities dealer.

Non-resident
withholding
tax

(8) For the purpose of Part XIII, any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender

(a) as an SLA compensation payment is, subject to paragraph (b) or (c), deemed to be a payment of interest made by the borrower to the lender;

(b) as an SLA compensation payment in respect of a security that is a qualified trust unit, is deemed, to the extent of the amount of the underlying payment to which the SLA compensation payment relates, to be an amount paid by the trust and having the same character and composition as the underlying payment;

(c) as an SLA compensation payment, if the security is not a qualified trust unit and throughout the term of the securities lending arrangement, the borrower has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (c) of the definition “qualified security” in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the security and the borrower is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain with respect of, the money or securities,

(i) is, to the extent of the amount of the interest or dividend paid in respect of the security, deemed to be a payment made by the borrower to the lender of interest or a dividend, as the case may be, payable on the security, and

(ii) is, to the extent of the amount of the interest, if any, paid in respect of the security, deemed

(A) for the purpose of subparagraph 212(1)(b)(vii) to have been payable by the issuer of the security, and

(B) to have been payable on a security that is a security described in subparagraph 212(1)(b)(ii) where the security is a security described in paragraph (c) of the definition “qualified security” in subsection (1); and

(d) as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security is deemed to be a payment of interest made by the borrower to the lender.

(8.1) For the purpose of paragraph (8)(d), if under a securities lending arrangement the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not, under the arrangement, pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the borrower is deemed to have, at the time that an identical security is or can reasonably be expected to be transferred or returned to the lender, paid to the lender under the arrangement an amount as a fee for the use of the security equal to the amount, if any, by which

(a) the interest on the money computed at the prescribed rates in effect during the term of the arrangement

exceeds

(b) the amount, if any, by which any amount that the lender pays or credits to the borrower under the arrangement exceeds the amount of the money.

(8.2) In applying subsection (8), any amount, paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender, that is deemed by paragraph

Deemed fee
for borrowed
security

Effect for tax
treaties

(8)(a), (b) or (d) to be a payment of interest, is deemed for the purposes of any tax treaty not to be payable on or in respect of the security.

(9) Section 260 of the Act is amended by adding the following after subsection (9):

Partnerships

(10) For the purpose of this section,

(a) a person includes a partnership; and

(b) a partnership is deemed to be a registered securities dealer if each member of the partnership is a registered securities dealer.

Corporate
members of
partnerships

(11) A corporation that is, in a taxation year, a member of a partnership is deemed

(a) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of its specified proportion of that amount, to be the same person as the partnership;

(b) for the purpose of applying paragraph (6.1)(a) in respect of the taxation year, to become obligated to pay its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of the amount the partnership becomes, in that fiscal period, obligated to pay to another person under the arrangement described in that paragraph; and

(c) for the purpose of applying section 129 in respect of the taxation year, to have paid

(i) if the partnership is not a registered securities dealer, the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation), and

(ii) if the partnership is a registered securities dealer, 1/3 of the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation).

Individual
members of
partnerships

(12) An individual that is, in a taxation year, a member of a partnership is deemed

(a) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive the individual's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of the individual's specified proportion of that amount, to be the same person as the partnership; and

(b) for the purpose of clause 82(1)(a)(ii)(B), to have paid the individual's specified proportion, for each fiscal period of the partnership that ends in the year, of each amount paid by the partnership in that fiscal period that is deemed by subsection (5.1) to have been received by another person as a taxable dividend.

(10) Subsections (1), (3), (5), (6) and (8) apply to arrangements made after 2001, except that, if the parties to an arrangement jointly so elect in writing and file the election with the Minister of National Revenue within 90 days after the day on which this Act is assented to, subsection 260(5.1) of the Act, as enacted by subsection (6), is to be read, in its application to SLA compensation payments or dealer compensation payments received under the arrangement before February 28, 2004, without reference to paragraph 260(5.1)(b), paragraph (c) or paragraphs (b) and (c), as specified by the parties in the election.

(11) Subsections (2) and (4) apply to arrangements made after 2002.

(12) Subsection (7) applies to

(a) arrangements made after December 20, 2002;

(b) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election referred to in paragraph 185(25)(b) of this Act, except that, in its application to an arrangement made before 2002, the reference to "subsection (5.1)" in paragraph 260(6.1)(a) of the Act, as enacted by subsection (7), is to be read as a reference to "subsection (5)"; and

(c) an arrangement, other than an arrangement to which paragraph (b) applies, made after 2001 and before December 21, 2002, except that, in its application before December 21, 2002, paragraph 260(6.1)(a) of the Act, as enacted by subsection (7), is to be read as follows:

(a) the amount that the corporation is obligated to pay to another person under an arrangement described in paragraphs (c) and (d) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend; and

(13) Subsection (9) applies to

(a) arrangements made after December 20, 2002; and

(b) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election referred to in paragraph 185(25)(b) of this Act, except that, in its application to an arrangement made before 2002, the reference to "subsection (5.1)" in paragraph 260(12)(b) of the Act, as enacted by subsection (9), is to be read as a reference to the expression "subsection (5)".

193. (1) The Act is amended by adding the following after section 260:

SCHEDULE
(Subsection 181(1))
 LISTED CORPORATIONS

2419726 Canada Inc.

AmeriCredit Financial Services of Canada Ltd.

AVCO Financial Services Quebec Limited

Bombardier Capital Ltd.

Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital

Canadian Cooperative Agricultural Financial Services

Canadian Home Income Plan Corporation

Citibank Canada Investment Funds Limited

Citicapital Commercial Corporation/Citicapital Corporation Commerciale

Citi Cards Canada Inc./Cartes Citi Canada Inc.

Citi Commerce Solutions of Canada Ltd.

CitiFinancial Canada East Corporation/CitiFinancière, corporation du Canada Est

CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.

CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires

CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l'Est

Citigroup Finance Canada Inc.

Crédit Industriel Desjardins

CU Credit Inc.

Ford Credit Canada Limited

GE Card Services Canada Inc./GE Services de Cartes du Canada Inc.

General Motors Acceptance Corporation of Canada Limited

GMAC Residential Funding of Canada, Limited

Household Commercial Canada Inc.

Household Finance Corporation of Canada

Household Finance Corporation Limited

Household Realty Corporation Limited

Hudson's Bay Company Acceptance Limited

John Deere Credit Inc./Crédit John Deere Inc.

Merchant Retail Services Limited
 PACCAR Financial Ltd./Compagnie Financière Paccar Ltée
 Paradigm Fund Inc./Le Fonds Paradigm Inc.
 Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc.
 Principal Fund Incorporated
 RT Mortgage-Backed Securities Limited
 RT Mortgage-Backed Securities II Limited
 State Farm Finance Corporation of Canada/Corporation de Crédit State Farm du Canada
 Trans Canada Credit Corporation
 Trans Canada Retail Services Company/Société de services de détails trans Canada
 Wells Fargo Financial Canada Corporation

(2) Subject to subsection (3), subsection (1) is deemed to have come into force on December 20, 2002.

(3) Subsection (1) is deemed to have come into force to enact the schedule set out in that subsection so as to, as of the dates set out below, list each of the following corporations in the schedule:

(a) 2419726 Canada Inc., January 1, 1998, except that, in its application

(i) after May 1999 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to “CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.”, and

(ii) after 1997 and before June 1999, the reference in the schedule to that corporation is to be read as a reference to “Commercial Credit Corporation CCC Limited/Corporation De Credit Commerciale CCC Limitee”;

(b) AmeriCredit Financial Services of Canada Ltd., June 30, 2001;

(c) Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital, September 25, 2000;

(d) Citibank Canada Investment Funds Limited, December 31, 2001;

(e) Citicapital Commercial Corporation/Citicapital Corporation Commerciale, January 1, 2000, except that, in its application after 1999 and before July 2001, the reference in the schedule to that corporation is to be read as a reference to “Associates Commercial Corporation of Canada Ltd./Les Associés, Corporation Commerciale du Canada Ltée”;

(f) Citi Cards Canada Inc./Cartes Citi Canada Inc., September 25, 2003;

(g) Citi Commerce Solutions of Canada Ltd., January 1, 2003;

(h) CitiFinancial Canada East Company/CitiFinancière, corporation du Canada Est, December 23, 1997, except that, in its application

- (i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to “CitiFinancial Services of Canada East Company/CitiFinancière, compagnie de services du Canada Est”,
- (ii) after September 26, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to “Associates Financial Services of Canada East Company/Les Associés, Compagnie de Services Financiers du Canada Est”,
- (iii) after February 12, 1998 and before September 27, 1999, the reference in the schedule to that corporation is to be read as a reference to “Avco Financial Services Canada East Company/Compagnie Services Financiers Avco Canada Est”,
- (iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as a reference to “Avco Financial Services Canada East Company/Services Financiers Avco Canada Est Compagnie”, and
- (v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as a reference to “Avco Financial Services Canada East Company”;

(i) CitiFinancial Canada, Inc./CitiFinancière Canada, Inc., March 2, 1998, except that, in its application

- (i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to “CitiFinancial Services of Canada, Ltd./CitiFinancière, services du Canada, Ltée”, and
- (ii) after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to “Associates Financial Services of Canada Ltd./Les Associés, Services Financières du Canada Ltée”;

(j) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 2, 1998, except that, in its application after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to “Associates Mortgage Corporation/Les Associés, Corporation de Prêts Hypothécaires”;

(k) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l’Est, December 23, 1997, except that, in its application

- (i) after November 2, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to “Associates Mortgage East Corporation/Les Associés, Corporation de Prêts Hypothécaires de l’Est”,
- (ii) after September 27, 1999 and before November 3, 1999, the reference in the schedule to that corporation is to be read as a reference to “Associates Mortgage

East Corporation/Les Associés, Corporation de Financiers du Prêts Hypothécaires de l'Est",

(iii) after February 12, 1998 and before September 28, 1999, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company/Compagnie Services Financiers Immobiliers Avco Est",

(iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company/Services Financiers Immobiliers Avco Est Compagnie", and

(v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company";

(l) Citigroup Finance Canada Inc., January 1, 1998, except that, in its application after 1997 and before June 11, 2003, the reference in the schedule to that corporation is to be read as a reference to "Associates Capital Corporation of Canada/Corporation de capital associés du Canada";

(m) Ford Credit Canada Limited, December 23, 1997;

(n) GE Card Services Canada Inc./GE Services de Cartes du Canada Inc., August 2, 2000;

(o) GMAC Residential Funding of Canada, Limited, January 1, 2003;

(p) John Deere Credit Inc./Crédit John Deere Inc., January 1, 1999;

(q) PACCAR Financial Ltd./Compagnie Financière Paccar Ltée, January 1, 2003;

(r) Paradigm Fund Inc./Le Fonds Paradigm Inc., January 1, 2002;

(s) Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc., January 1, 1998, except that, in its application after 1997 and before June 13, 2002, the reference in the schedule to that corporation is to be read as a reference to "Prêts étudiants Acadie Inc./Acadia Student Loans Inc.";

(t) State Farm Finance Corporation of Canada/ Corporation de Crédit State Farm du Canada., January 1, 2002, except that, in its application after 2001 and before May 2002, the reference in the schedule to that corporation is to be read as a reference to "VNB Financial Services Inc./Services financiers VNB, Inc.";

(u) Trans Canada Retail Services Company/Société de services de détails trans Canada, January 1, 1999, except that, in its application after 1998 and before January 15, 2002, the reference in the schedule to that corporation is to be read as a reference to "National Retail Credit Services Company/Société de services de crédit aux détaillants national"; and

(v) Wells Fargo Financial Canada Corporation, January 1, 1999, except that, in its application after 1998 and before September 7, 2001, the reference in the schedule

to that corporation is to be read as a reference to “Norwest Financial Canada Company”.

(4) Ford Credit Canada Limited is deemed to have been, from July 1, 1989 to December 22, 1997, prescribed by a regulation made under paragraph 181(1)(g) of the Act.

(5) The schedule, as enacted by subsection (1), is amended by removing from the list, as of the dates set out below, the following corporations:

(a) GE Card Services Canada Inc./ GE Services Cartes du Canada Inc., January 1, 2003;

(b) 2419726 Canada Inc., March 31, 2002;

(c) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 31, 2002; and

(d) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l'Est, April 1, 2002.

CONSEQUENTIAL AND RELATED AMENDMENTS

An Act to Amend the Income Tax Act (Natural Resources)

194. (1) The part of subsection 2(5) of the *Act to Amend the Income Tax Act (Natural Resources)* before paragraph (a) is replaced by the following:

(5) For each taxation year that ends after 2002 and begins before 2008, paragraph 18(1)(m) of the Act applies, notwithstanding paragraph 20(1)(v) of the Act, only to the percentage of each amount described by paragraph 18(1)(m) of the Act that is the total of:

(2) Subsection 2(7) of the Act is replaced by the following:

(7) Subsection (3) applies to taxation years that begin after 2007.

195. Section 9 of the Act is repealed.

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act

196. (1) Subsections 216(1) and (2) of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* are replaced by the following:

216. (1) There shall be imposed, levied and collected under this Part in respect of the taxable income earned by, and the taxable capital of, a corporation in a taxation year in the offshore area, in accordance with subsection (3), the taxes, interest, penalties and other sums that would be imposed, levied and collected under the *Nova Scotia Income Tax Act* in respect of that taxable income and that taxable capital if the offshore area were in the land portion of the Province.

(2) Despite subsection (1), if taxes are imposed under the *Nova Scotia Income Tax Act* in respect of the taxable income earned by, or the taxable capital of, a corporation in a taxation

2003, c. 28

1998, c. 28

Imposition of
corporate
income tax and
capital tax in
offshore area

Exception

year in the Province and taxes would, in the absence of this subsection, be imposed under subsection (1) in respect of that taxable income or that taxable capital, no taxes shall be imposed under subsection (1) in respect of that taxable income or that taxable capital.

(2) Subsection 216(4) of the Act is replaced by the following:

(4) For the purpose of this section, the taxable income of a corporation earned in a taxation year in the offshore area or in the Province shall be determined in accordance with Part IV of the *Income Tax Regulations* as though the offshore area were a province and the *Income Tax Act* were read without reference to the definition “province” in subsection 124(4) of that Act, and “taxable capital” means taxable capital employed in Canada determined in accordance with Part I.3 of that Act.

(3) Subsections (1) and (2) are deemed to have come into force on April 1, 1997.

Determination
of taxable
income earned
in the offshore
area

R.S., c. F-8;
1995, c. 17, s.
45(1)

Federal-Provincial Fiscal Arrangements Act

197. (1) Paragraph 12.2(1)(b) of the *Federal-Provincial Fiscal Arrangements Act* is replaced by the following:

(b) the Act of the legislature of the province imposing a tax on the income of corporations provides, in the opinion of the Minister, for a deduction in computing taxable income of a corporation for taxation years ending in the fiscal year of an amount that is not less than the amount deductible by the corporation for the year under paragraph 110(1)(k) of the *Income Tax Act*.

(2) Subsection (1) applies after 2003.

2001, c. 17

Income Tax Amendments Act, 2000

198. (1) Subsection 59(2) of the *Income Tax Amendments Act, 2000* is replaced by the following:

(2) Subsection (1) applies to taxation years that end after February 27, 2000, except that, for a taxation year of a debtor that includes either February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the reference to “ $\frac{1}{2}$ ” in subsection 80.01(10) of the Act, as enacted by subsection (1), is to be read as a reference to the fraction in paragraph 38(a) of the Act that applied to the debtor for the year in which the commercial debt obligation was deemed to have been settled.

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

199. (1) Subsection 70(11) of the Act is replaced by the following:

(11) Subsections (4), (5) and (7) apply to taxation years that end after February 27, 2000, except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to “twice” in subsection 93(1.2) of the Act, as enacted by subsection

(4), in subsection 93(2) of the Act, as enacted by subsection (5), and in subsection 93(2.2) of the Act, as enacted by subsection (7), are to be read as references to “the fraction that is the reciprocal of the fraction in paragraph 38(a) of the Act, as enacted by subsection 22(1) of the *Income Tax Amendments Act, 2000*, that applies to the taxpayer for the year, multiplied by”.

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

PART 3

AMENDMENTS RELATED TO BIJURALISM

INCOME TAX ACT

R.S. c. 1, (5th
Supp.)

200. (1) Subclauses 12(1)(o)(ii)(B)(I) to (V) of the *Income Tax Act* are replaced by the following:

(I) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada, in respect of which the taxpayer had an interest, or for civil law a right,

(II) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada, in respect of which the taxpayer had an interest, or for civil law a right,

(III) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada in respect of which the taxpayer had an interest, or for civil law a right,

(IV) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada in respect of which the taxpayer had an interest, or for civil law a right, or

(V) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from a deposit located in Canada of bituminous sands or oil shales in respect of which the taxpayer had an interest, or for civil law a right;

(2) Subparagraph 12(1)(x)(viii) of the Act is replaced by the following:

(viii) may not reasonably be considered to be a payment made in respect of the acquisition by the payer or the public authority of an interest in the taxpayer, an interest in, or for civil law a right in, the taxpayer’s business or an interest in, or for civil law a real right in, the taxpayer’s property;

(3) Subsection 12(4) of the Act is replaced by the following:

Interest from
investment
contract

(4) Subject to subsection (4.1), where in a taxation year a taxpayer (other than a taxpayer to whom subsection (3) applies) holds an interest in, or for civil law a right in, an investment contract on any anniversary day of the contract, there shall be included in computing the taxpayer's income for the year the interest that accrued to the taxpayer to the end of that day with respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer's income for the year or any preceding taxation year.

(4) Subsections 12(9) and (9.1) of the Act are replaced by the following:

Deemed
accrual

(9) For the purposes of subsections (3), (4) and (11) and 20(14) and (21), where a taxpayer acquires an interest in, or for civil law a right in, a prescribed debt obligation, an amount determined in prescribed manner shall be deemed to accrue to the taxpayer as interest on the obligation in each taxation year during which the taxpayer holds the interest or the right in the obligation.

Exclusion of
proceeds of
disposition

(9.1) Where a taxpayer disposes of an interest in, or for civil law a right in, a debt obligation that is a debt obligation in respect of which the proportion of the payments of principal to which the taxpayer is entitled is not equal to the proportion of the payments of interest to which the taxpayer is entitled, such portion of the proceeds of disposition received by the taxpayer as can reasonably be considered to represent a recovery of the cost to the taxpayer of the interest or the right in the debt obligation shall, notwithstanding any other provision of this Act, not be included in computing the income of the taxpayer, and for the purpose of this subsection, a debt obligation includes, for greater certainty, all of the issuer's obligations to pay principal and interest under that obligation.

(5) Paragraph (i) of the definition "investment contract" in subsection 12(11) of the Act is replaced by the following:

(i) an obligation in respect of which the taxpayer has (otherwise than because of subsection (4)) at periodic intervals of not more than one year, included, in computing the taxpayer's income throughout the period in which the taxpayer held an interest in, or for civil law a right in, the obligation, the income accrued thereon for such intervals,

201. (1) The portion of subsection 13(5.2) of the Act before paragraph (a) is replaced by the following:

Idem

(5.2) Where, at any time, a taxpayer has acquired a capital property that is depreciable property or real or immovable property in respect of which, before that time, the taxpayer or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid or payable for the use of, or the right to use, the property and the cost or the capital cost (determined without reference to this subsection) at that time of the property to the taxpayer is less than the fair market value thereof at that time determined without reference to any option with respect to that property, for the purposes of this section, section 20 and any regulations made under paragraph 20(1)(a), the following rules apply:

(2) Subsection 13(5.3) of the Act is replaced by the following:

Idem

(5.3) Where, at any time in a taxation year, a taxpayer has disposed of a capital property that is an option with respect to depreciable property or real or immovable property in respect of which the taxpayer or any person with whom the taxpayer was not dealing at arm's length was entitled to a deduction in computing income in respect of any amount paid for the use of, or the right to use, the property, for the purposes of this section, the amount, if any, by which the proceeds of disposition to the taxpayer of the option exceed the taxpayer's cost in respect thereof shall be deemed to be an excess referred to in subsection (1) in respect of the taxpayer for the year.

(3) Paragraph 13(7.5)(c) of the Act is replaced by the following:

(c) where a taxpayer acquires an intangible property, or for civil law an incorporeal property, as a consequence of making a payment to which paragraph (a) applies or incurring a cost to which paragraph (b) applies,

- (i) the property referred to in paragraph (a) or (b) is deemed to include the intangible or incorporeal property, and
- (ii) the portion of the capital cost referred to in paragraph (a) or (b) that applies to the intangible or incorporeal property is deemed to be the amount determined by the formula

$$A \times B/C$$

where

- A is the lesser of the amount of the payment made or cost incurred and the amount determined for C,
- B is the fair market value of the intangible or incorporeal property at the time the payment was made or the cost was incurred, and
- C is the fair market value at the time the payment was made or the cost was incurred of all intangible or incorporeal properties acquired as a consequence of making the payment or incurring the cost; and

202. (1) Paragraph (c) of the definition "eligible capital expenditure" in subsection 14(5) of the Act is replaced by the following:

- (c) that is the cost of, or any part of the cost of,
 - (i) tangible property, or for civil law corporeal property, of the taxpayer,
 - (ii) intangible property, or for civil law incorporeal property, that is depreciable property of the taxpayer,
 - (iii) property in respect of which any deduction (otherwise than under paragraph 20(1)(b)) is permitted in computing the taxpayer's income from the business or would be so permitted if the taxpayer's income from the business were sufficient for the purpose, or
 - (iv) an interest in, or for civil law a right in, or a right to acquire any property described in any of subparagraphs (i) to (iii)

(2) Subparagraph (f)(iv) of the definition “eligible capital expenditure” in subsection 14(5) of the Act is replaced by the following:

(iv) an interest in, or for civil law a right in, or a right to acquire any property described in any of subparagraphs (i) to (iii).

203. The portion of subsection 16.1(1) of the Act before paragraph (a) is replaced by the following:

16.1 (1) Where a taxpayer (in this section referred to as the “lessee”) leases tangible property, or for civil law corporeal property, that is not prescribed property and that would, if the lessee acquired the property, be depreciable property of the lessee, from a person resident in Canada other than a person whose taxable income is exempt from tax under this Part, or from a non-resident person who holds the lease in the course of carrying on a business through a permanent establishment in Canada, as defined by regulation, any income from which is subject to tax under this Part, who owns the property and with whom the lessee was dealing at arm’s length (in this section referred to as the “lessor”) for a term of more than one year, if the lessee and the lessor jointly elect in prescribed form filed with their returns of income for their respective taxation years that include the particular time when the lease began, the following rules apply for the purpose of computing the income of the lessee for the taxation year that includes the particular time and for all subsequent taxation years:

204. (1) Paragraph 18(2)(f) of the Act is replaced by the following:

(f) in the case of a corporation whose principal business is the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real or immovable property owned by it, to or for a person with whom the corporation is dealing at arm’s length, the corporation’s base level deduction for the particular year.

(2) Paragraphs 18(3.4)(a) and (b) of the Act are replaced by the following:

(a) a corporation whose principal business is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real or immovable property owned by it, to or for a person with whom the corporation is dealing at arm’s length, or

(b) a partnership

(i) each member of which is a corporation described in paragraph (a), and

(ii) the principal business of which is throughout the year the leasing, rental or sale, or the development for lease, rental or sale, or any combination thereof, of real or immovable property held by it, to or for a person with whom each member of the partnership is dealing at arm’s length,

205. (1) Paragraph 18.1(9)(b) of the French version of the Act is replaced by the following:

b) au cours de la période commençant au moment de la disposition ou de l’extinction et se terminant 30 jours après ce moment, un contribuable — qui avait une part directe ou

indirecte dans le droit — a une autre semblable part dans un autre droit aux produits, laquelle autre part est un abri fiscal ou un abri fiscal déterminé au sens de l'article 143.2.

(2) Subparagraph 18.1(10)(b)(v) of the French version of the Act is replaced by the following:

(v) en cas d'application du paragraphe (9), le début d'une période de 30 jours tout au long de laquelle aucun contribuable ayant eu une part directe ou indirecte dans le droit n'a une autre semblable part dans un autre droit aux produits, laquelle autre part est un abri fiscal ou un abri fiscal déterminé au sens de l'article 143.2.

206. (1) Subparagraph 20(1)(m)(iii) of the Act is replaced by the following:

(iii) periods for which rent or other amounts for the possession or use of land or of chattels or movables have been paid in advance, or

(2) Paragraph 20(1)(n) of the Act is replaced by the following:

(n) where an amount included in computing the taxpayer's income from the business for the year or for a preceding taxation year in respect of property sold in the course of the business is payable to the taxpayer after the end of the year and, except where the property is real or immovable property, all or part of the amount was, at the time of the sale, not due until at least 2 years after that time, a reasonable amount as a reserve in respect of such part of the amount as can reasonably be regarded as a portion of the profit from the sale;

(3) The portion of subsection 20(11) of the Act before paragraph (a) is replaced by the following:

(11) In computing the income of an individual from a property other than real or immovable property for a taxation year after 1975 that is income from a source outside Canada, there may be deducted the amount, if any, by which,

Foreign taxes
on income
from property
exceeding
15%

(4) Subsections 20(17) and (18) of the Act are repealed.

(5) The portion of subsection 20(21) of the Act before paragraph (a) is replaced by the following:

(21) Where a taxpayer has in a particular taxation year disposed of a property that is an interest in, or for civil law a right in, a debt obligation for consideration equal to its fair market value at the time of disposition, there may be deducted in computing the taxpayer's income for the particular year the amount, if any, by which

Debt
obligation

207. (1) The portion of subsection 20.1(1) of the French version of the Act before paragraph (a) is replaced by the following:

20.1 (1) Le contribuable qui, à un moment donné, cesse d'utiliser de l'argent emprunté en vue de tirer un revenu d'une immobilisation (sauf un bien immeuble ou réel ou un bien amortissable) est réputé continuer à ainsi utiliser la fraction de l'argent emprunté qui correspond à l'excédent visé à l'alinéa b), dans la mesure où cette fraction reste à rembourser après ce moment, si les conditions suivantes sont réunies :

Argent
emprunté pour
tirer un revenu
d'un bien

(2) Paragraph 20.1(1)(a) of the English version of the Act is replaced by the following:

(a) at any time after 1993 borrowed money ceases to be used by a taxpayer for the purpose of earning income from a capital property (other than real or immovable property or depreciable property), and

208. (1) Paragraph 35(1)(a) of the Act is replaced by the following:

(a) is received in a taxation year by an individual as consideration for the disposition by the individual to the corporation of a mining property or an interest, or for civil law a right, therein acquired by the individual as a result of the individual's efforts as a prospector, either alone or with others, or

(2) Subparagraph 35(1)(b)(ii) of the Act is replaced by the following:

(ii) as consideration for the disposition by the person referred to in subparagraph (i) to the corporation of a mining property or an interest, or for civil law a right, therein acquired under the arrangement under which that person made the advance or paid the expenses, or if the prospector's employee, acquired by the person through the employee's efforts,

(3) Paragraphs 35(1)(e) and (f) of the Act are replaced by the following:

(e) notwithstanding subdivision c, in computing the cost to the individual, person or partnership, as the case may be, of the share, no amount shall be included in respect of the disposition of the mining property or the interest, or for civil law the right, therein, as the case may be,

(f) notwithstanding sections 66 and 66.2, in computing the cost to the corporation of the mining property or the interest, or for civil law the right, therein, as the case may be, no amount shall be included in respect of the share, and

(4) Paragraph (b) of the definition "mining property" in subsection 35(2) of the Act is replaced by the following:

(b) real property or an immovable in Canada (other than depreciable property) the principal value of which depends on its mineral resource content;

209. (1) Clause 37(8)(d)(iii)(B) of the French version of the Act is replaced by the following:

(B) une université, un collège ou une organisation agréés, dans la mesure où il est raisonnable de considérer le paiement fait pour permettre à cette entité d'acquérir un bâtiment — ou un droit de tenure à bail dans un bâtiment — sur lequel le contribuable a un intérêt ou, pour l'application du droit civil, un droit ou sur lequel il est raisonnable de s'attendre à ce qu'il en ait un.

(2) Clause 37(8)(d)(iii)(E) of the English version of the Act is replaced by the following:

(E) in the case of a payment to a person described in clause (C), to the extent that the amount of the payment may reasonably be considered to have been made to enable the recipient to acquire a building, or a leasehold interest in a building, in which the taxpayer has, or may reasonably be expected to acquire, an interest or, for civil law, a right.

210. Paragraph (h) of the definition “flow-through entity” in subsection 39.1(1) of the Act is replaced by the following:

(h) a trust maintained primarily for the benefit of employees of a corporation or 2 or more corporations that do not deal at arm’s length with each other, where one of the main purposes of the trust is to hold interests in, or for civil law rights in, shares of the capital stock of the corporation or corporations, as the case may be, or any corporation not dealing at arm’s length therewith,

211. Subparagraph (i) of the description of D in paragraph 40(2)(b) of the Act is replaced by the following:

(i) where the acquisition date is before February 23, 1994 and the taxpayer or a spouse or common-law partner of the taxpayer elected under subsection 110.6(19) in respect of the property or an interest, or for civil law a right, therein that was owned, immediately before the disposition, by the taxpayer, $\frac{4}{3}$ of the lesser of

(A) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse or common-law partner of the taxpayer that would have resulted from an election by the taxpayer or spouse or common-law partner under subsection 110.6(19) in respect of the property or the interest or right if

(I) this Act were read without reference to subsection 110.6(20), and

(II) the amount designated in the election were equal to the amount, if any, by which the fair market value of the property or the interest or right at the end of February 22, 1994 exceeds the amount determined by the formula

$$E - 1.1F$$

where

E is the amount designated in the election that was made in respect of the property or the interest or right, and

F is the fair market value of the property or the interest or right at the end of February 22, 1994, and

(B) the total of all amounts each of which is the taxable capital gain of the taxpayer or of a spouse or common-law partner of the taxpayer that would have resulted from an election that was made under subsection 110.6(19) in respect of the property or the interest or right if the property were the principal residence of neither the taxpayer nor the spouse or common-law partner for each particular taxation year unless the property was designated, in a return of income for the taxation year that includes

February 22, 1994 or for a preceding taxation year, to be the principal residence of either of them for the particular taxation year, and

212. Paragraph 43.1(2)(b) of the French version of the Act before subparagraph (i) is replaced by the following:

b) lorsque la personne qui détient un domaine résiduel sur le bien réel immédiatement avant le décès du particulier a un lien de dépendance avec le détenteur du domaine viager, le moins élevé des montants suivants est ajouté, après ce décès, au calcul du prix de base rajusté du bien pour cette personne :

213. (1) Subsection 44(1.1) of the Act is replaced by the following:

(1.1) Where the former property referred to in subparagraph 44(1)(e)(iii) is real or immovable property in respect of the disposition of which the rules in subsection 73(3) apply, in computing the amount of any claim in respect of that property under that subparagraph, it shall be read as if the references therein to “1/5” and “4” were references to “1/10” and “9” respectively.

(2) The portion of subsection 44(6) of the Act before paragraph (a) is replaced by the following:

(6) Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land (or an interest, or for civil law a right, therein) subjacent to, or immediately contiguous to and necessary for the use of, the building, for the purposes of this subdivision, the amount if any, by which

214. Paragraphs 44.1(10)(c) and (d) of the Act are replaced by the following:

(c) a corporation the principal business of which is the leasing, rental, development or sale, or any combination of those activities, of real or immovable property owned by it; or

(d) a corporation more than 50 per cent of the fair market value of the property of which (net of debts incurred to acquire the property) is attributable to real or immovable property.

215. (1) Paragraph 53(1)(o) of the French version of the Act is replaced by the following:

o) lorsque le bien est un bien réel du contribuable, tout montant à ajouter, en application de l’alinéa 43.1(2)*b)*, dans le calcul du prix de base rajusté du bien pour le contribuable;

(2) The portion of paragraph 53(2)(e) of the Act before subparagraph (i) is replaced by the following:

(e) where the property is a share, or an interest in or a right to — or, for civil law, a right in or to — a share, of the capital stock of a corporation acquired before August, 1976, an amount equal to any expense incurred by the taxpayer in consideration therefor, to the extent that the expense was, by virtue of

216. The portion of the definition “listed personal property” in section 54 of the Act before paragraph (a) is replaced by the following:

Farm property
disposed of to
a child

Deemed
proceeds of
disposition

“listed
personal
property”
« biens
meubles
déterminés »

“listed personal property” of a taxpayer means the taxpayer’s personal-use property that is all or any portion of, or any interest in or right to — or, for civil law, any right in or to — any

217. The portion of the description A in subsection 56.1(2) of the Act before paragraph (a) is replaced by the following:

- A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a person in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property, or for civil law corporeal property, that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a taxpayer, children in the taxpayer’s custody or both the taxpayer and those children, where the taxpayer is

218. The portion of the description A in subsection 60.1(2) of the Act before paragraph (a) is replaced by the following:

- A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a taxpayer in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property, or for civil law corporeal property, that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (a) or (b) resides) incurred in the year or the preceding taxation year for the maintenance of a person, children in the person’s custody or both the person and those children, where the person is

219. Subparagraph 65(2)(a)(i) of the Act is replaced by the following:

- (i) natural accumulations of petroleum or natural gas, oil or gas wells or mineral resources in which the taxpayer has any interest or, for civil law, right, or

220. (1) Paragraphs 66(12.1)(a) and (b) of the Act are replaced by the following:

- (a) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest in or a right to — or, for civil law, a right in or to — the share or the property) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily Canadian exploration and development expenses of the taxpayer (or would have been so regarded if they had been incurred by the taxpayer after

1971 and before May 7, 1974) or a Canadian exploration expense, there shall at that time be included in the amount determined for G in the definition “cumulative Canadian exploration expense” in subsection 66.1(6) in respect of the taxpayer the amount that became receivable by the taxpayer at that time; and

(b) where as a result of a transaction occurring after May 6, 1974 an amount has become receivable by a taxpayer at a particular time in a taxation year and the consideration given by the taxpayer therefor was property (other than a share or a Canadian resource property, or an interest in or a right to — or, for civil law, a right in or to — the share or the property) or services, the original cost of which to the taxpayer may reasonably be regarded as having been primarily a Canadian development expense, there shall at that time be included in the amount determined for G in the definition “cumulative Canadian development expense” in subsection 66.2(5) in respect of the taxpayer the amount that became receivable by the taxpayer at that time.

(2) Paragraph (c) of the definition “Canadian resource property” in subsection 66(15) of the Act is replaced by the following:

(c) any oil or gas well in Canada or any real property or immovable in Canada the principal value of which depends on its petroleum or natural gas content (but not including any depreciable property),

(3) Paragraphs (f) and (g) of the definition “Canadian resource property” in subsection 66(15) of the Act are replaced by the following:

(f) any real property or immovable in Canada the principal value of which depends on its mineral resource content (but not including any depreciable property),

(g) any right to or interest in — or, for civil law, any right to or in — any property described in any of paragraphs (a) to (e), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership, or

(h) an interest in real property or a real right in an immovable;

221. (1) Paragraph (i) of the definition “Canadian exploration expense” in subsection 66.1(6) of the Act is replaced by the following:

(i) any expense referred to in any of paragraphs (a) to (g) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in or right to — or, for civil law, any right in or to — such shares,

(2) Paragraph (j) of the definition “Canadian exploration expense” in subsection 66.1(6) of the Act is replaced by the following:

(j) any consideration given by the taxpayer for any share or any interest in or right to — or, for civil law, any right in or to — a share, except as provided by paragraph (i),

222. (1) Clause 66.2(2)(b)(ii)(A) of the Act is replaced by the following:

(A) an amount included in the taxpayer's income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share or any interest in or right to — or, for civil law, any right in or to — a share, acquired by the taxpayer under circumstances described in paragraph (g) of the definition "Canadian development expense" in subsection (5) or paragraph (i) of the definition "Canadian exploration expense" in subsection 66.1(6), or

(2) Paragraph (e) of the definition "Canadian development expense" in subsection 66.2(5) of the Act is replaced by the following:

(e) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15) or any right to or interest in — or, for civil law, any right in or to — such property (other than such a right or interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership) but not including any payment made to any of the persons referred to in subparagraph 18(1)(m)(i) for the preservation of a taxpayer's rights in respect of a Canadian resource property nor a payment to which paragraph 18(1)(m) applied because of clause 18(1)(m)(ii)(B),

(3) Paragraph (e) of the definition "Canadian development expense" in subsection 66.2(5) of the Act is replaced by the following:

(e) the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (b), (e) or (f) of the definition "Canadian resource property" in subsection 66(15), or any right to or interest in — or, for civil law, any right in or to — such property (other than a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership),

(4) Paragraph (g) of the definition "Canadian development expense" in subsection 66.2(5) of the Act is replaced by the following:

(g) any cost or expense referred to in any of paragraphs (a) to (e) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in or right to — or, for civil law, any right in or to — such shares,

(5) Paragraph (h) of the definition "Canadian development expense" in subsection 66.2(5) of the Act is replaced by the following:

(h) any consideration given by the taxpayer for any share or any interest in or right to — or, for civil law, any right in or to — a share, except as provided by paragraph (g),

(6) The portion of the description of F in the definition "cumulative Canadian development expense" in subsection 66.2(5) of the Act before paragraph (a) is replaced by the following:

F is the total of all amounts each of which is an amount in respect of property described in paragraph (b), (e) or (f) of the definition “Canadian resource property” in subsection 66(15) or any right to or interest in — or, for civil law, any right in or to — such a property, other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership, (in this description referred to as “the particular property”) disposed of by the taxpayer before that time equal to the amount, if any, by which

(7) Subsection (3) applies to taxation years that begin after 2006.

223. The portion of subsection 66.3(2) of the Act before paragraph (a) is replaced by the following:

(2) Where, at any time after May 23, 1985, a corporation has issued a share of its capital stock under circumstances described in paragraph (i) of the definition “Canadian exploration expense” in subsection 66.1(6), paragraph (g) of the definition “Canadian development expense” in subsection 66.2(5) or paragraph (c) of the definition “Canadian oil and gas property expense” in subsection 66.4(5) or has issued a share of its capital stock on the exercise of an interest in or right to — or, for civil law, a right in or to — such a share granted under circumstances described in any of those paragraphs, in computing, at any particular time after that time, the paid-up capital in respect of the class of shares of the capital stock of the corporation that included that share

224. (1) Clause 66.4(2)(a)(ii)(A) of the Act is replaced by the following:

(A) an amount included in the taxpayer’s income for the year by virtue of a disposition in the year of inventory described in section 66.3 that was a share or any interest in or right to — or, for civil law, any right in or to — a share acquired by the taxpayer under circumstances described in paragraph (c) of the definition “Canadian oil and gas property expense” in subsection (5), or

(2) Paragraph (a) of the definition “Canadian oil and gas property expense” in subsection 66.4(5) of the Act is replaced by the following:

(a) notwithstanding paragraph 18(1)(m), the cost to the taxpayer of, including any payment for the preservation of a taxpayer’s rights in respect of, any property described in paragraph (a), (c) or (d) of the definition “Canadian resource property” in subsection 66(15) or any right to or interest in — or, for civil law, any right in or to — such property (other than such a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in subparagraph 18(1)(m)(i) for the preservation of a taxpayer’s rights in respect of a Canadian resource property nor a payment (other than a net royalty payment referred to in this paragraph) to which paragraph 18(1)(m) applied because of clause 18(1)(m)(ii)(B),

Deductions
from paid-up
capital

(3) Paragraph (a) of the definition “Canadian oil and gas property expense” in subsection 66.4(5) of the Act is replaced by the following:

(a) the cost to the taxpayer of, including any payment for the preservation of a taxpayer’s rights in respect of, any property described in paragraph (a), (c) or (d) of the definition “Canadian resource property” in subsection 66(15) or any right to or interest in — or, for civil law, any right in or to — such property (other than a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership), or an amount paid to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease,

(4) Paragraph (c) of the definition “Canadian oil and gas property expense” in subsection 66.4(5) of the Act is replaced by the following:

(c) any cost or expense referred to in paragraph (a) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in or right to — or, for civil law, any right in or to — such shares,

(5) The portion of the description of F in the definition “cumulative Canadian oil and gas property expense” in subsection 66.4(5) of the Act before paragraph (a) is replaced by the following:

F is the total of all amounts each of which is an amount in respect of property described in paragraph (a), (c) or (d) of the definition “Canadian resource property” in subsection 66(15) or any right to or interest in — or, for civil law, any right in or to — such a property, other than such a right or interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership, (in this description referred to as “the particular property”) disposed of by the taxpayer before that time equal to the amount, if any, by which

(6) Subsection (3) applies to taxation years that begin after 2006.

225. (1) Clause 66.7(1)(b)(i)(A) of the Act is replaced by the following:

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to — or, for civil law, any right in or to — the particular property to the extent that the proceeds of the disposition have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (3)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

(2) Clause 66.7(2)(b)(i)(A) of the Act is replaced by the following:

(A) the amount included under subsection 59(1) in computing its income for the year that can reasonably be regarded as attributable to the disposition by it of any interest in or right to — or, for civil law, any right in or to — the particular property, or

(3) Clause 66.7(3)(b)(i)(A) of the Act is replaced by the following:

(A) the amount included in computing its income for the year under paragraph 59(3.2)(c) that may reasonably be regarded as being attributable to the disposition by it in the year or a preceding taxation year of any interest in or right to — or, for civil law, any right in or to — the particular property to the extent that the proceeds have not been included in determining an amount under clause 29(25)(d)(i)(A) of the *Income Tax Application Rules*, this clause, clause (1)(b)(i)(A) or paragraph (10)(g) for a preceding taxation year,

226. The portion of paragraph 79.1(6)(b) of the Act before subparagraph (i) is replaced by the following:

(b) all amounts each of which is an outlay or expense made or incurred, or a specified amount at that time of a debt that is assumed, by the creditor at or before that time to protect the creditor's interest, or for civil law the creditor's right, in the particular property, except to the extent the outlay or expense

227. Paragraph 80(2)(o) of the Act is replaced by the following:

(o) notwithstanding paragraph (n), where a commercial debt obligation, for which a particular person is liable with one or more other persons, is settled at any time in respect of the particular person but not in respect of all of the other persons, the portion of the obligation that can reasonably be considered to be the particular person's share of the obligation shall be considered to have been issued by the particular person and settled at that time and not at any subsequent time;

228. Subsection 80.04(11) of the English version of the Act is replaced by the following:

(11) Where taxes, interest and penalties are payable under this Act by a person for a taxation year and those taxes, interest and penalties are payable by a debtor because of subsection (10), the debtor and the person are jointly and severally, or solidarily, liable to pay those amounts.

229. (1) Paragraphs 85(1.1)(a) and (b) of the Act are replaced by the following:

(a) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person);

(b) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident insurer where that property and the property received as consideration for that property are designated insurance property for the year;

(2) Paragraph 85(1.1)(f) of the Act is replaced by the following:

(f) an inventory (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable);

(3) Paragraph 85(1.1)(h) of the Act is replaced by the following:

(h) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person (other than a non-resident insurer) and used in the year in a business carried on in Canada by that person; or

(4) Subparagraph 85(2)(a)(i) of the Act is replaced by the following:

(i) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, where the partnership was not a Canadian partnership at the time of the disposition),

230. (1) Subparagraph (a)(ii) of the definition “investment business” in subsection 95(1) of the Act is replaced by the following:

(ii) the development of real property or immovables for sale, the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks, and

(2) Paragraph (g) of the definition “investment property” in subsection 95(1) of the Act is replaced by the following:

(g) real property or immovables,

(3) Paragraph (j) of the definition “investment property” in subsection 95(1) of the Act is replaced by the following:

(j) interests in, or for civil law rights in, or options in respect of, property that is included in any of paragraphs (a) to (i);

231. (1) The portion of subsection 98(3) of the Act before paragraph (a) is replaced by the following:

(3) Where at any particular time after 1971 a Canadian partnership has ceased to exist and all the partnership property has been distributed to persons who were members of the partnership immediately before that time so that immediately after that time each such person has, in each such property, an undivided interest, or for civil law an undivided right, (which undivided interest or undivided right is referred to in this subsection as an “undivided interest or right”, as the case may be) that, when expressed as a percentage (referred to in this subsection as that person’s “percentage”) of all undivided interests or rights in the property, is equal to the person’s undivided interest or right, when so expressed, in each other such property, if each such person has jointly so elected in respect of the property in prescribed form and within the time referred to in subsection 96(4), the following rules apply:

(2) The portion of paragraph 98(3)(b) before subparagraph (i) of the Act is replaced by the following:

(b) the cost to each such person of that person’s undivided interest or right in each such property shall be deemed to be an amount equal to the total of

(3) Subparagraph 98(3)(b)(ii) of the Act is replaced by the following:

- (ii) where the amount determined under subparagraph (a)(i) exceeds the amount determined under subparagraph (a)(ii), the amount determined under paragraph (c) in respect of the person's undivided interest or right in the property;

(4) Paragraph 98(3)(c) of the Act is replaced by the following:

(c) the amount determined under this paragraph in respect of each such person's undivided interest or right in each such property that was a capital property (other than depreciable property) of the partnership is such portion of the excess, if any, described in subparagraph (b)(ii) as is designated by the person in respect of the property, except that

- (i) in no case shall the amount so designated in respect of the person's undivided interest or right in any such property exceed the amount, if any, by which the person's percentage of the fair market value of the property immediately after its distribution exceeds the person's percentage of the cost amount to the partnership of the property immediately before its distribution, and
- (ii) in no case shall the total of amounts so designated in respect of the person's undivided interest or right in all such capital properties (other than depreciable property) exceed the excess, if any, described in subparagraph (b)(ii);

(5) Paragraph 98(3)(e) of the Act is replaced by the following:

(e) where the property so distributed by the partnership was depreciable property of the partnership of a prescribed class and any such person's percentage of the amount that was the capital cost to the partnership of that property exceeds the amount determined under paragraph (b) to be the cost to the person of the person's undivided interest or right in the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

- (i) the capital cost to the person of the person's undivided interest or right in the property shall be deemed to be the person's percentage of the amount that was the capital cost to the partnership of the property, and
- (ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the person of the undivided interest or right;

(6) Subparagraph 98(3)(g)(i) of the Act is replaced by the following:

- (i) for the purposes of determining under this Act any amount relating to cumulative eligible capital, an eligible capital amount, an eligible capital expenditure or eligible capital property, each such person shall be deemed to have continued to carry on the business, in respect of which the property was eligible capital property and that was previously carried on by the partnership, until the time that the person disposes of the person's undivided interest or right in the property,

232. (1) Clauses 108(2)(b)(ii)(A) and (B) of the Act are replaced by the following:

(A) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property or an interest in real property, or of any immovable or a real right in immovables, that is capital property of the trust, or

(2) Clauses 108(2)(b)(iii)(F) and (G) of the Act are replaced by the following:

(F) real property situated in Canada, and interests in such real property, or immovables situated in Canada and real rights in such immovables, and

(G) rights to and interests in — or, for civil law, rights in or to — any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(3) Paragraph 108(2)(c) of the Act is replaced by the following:

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property or an interest in real property — or to immovables or a real right in immovables — and the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition “qualified investment” in section 204, real property or an interest in real property — or immovables or a real right in immovables — or any combination of those properties.

233. (1) The portion of paragraph (a) of the definition “qualified farm property” before subparagraph (i) in subsection 110.6(1) of the Act is replaced by the following:

(a) real or immovable property that was used by

(2) The portion of paragraph (a) of the definition “qualified farm property” in subsection 110.6(1) of the French version of the Act after subparagraph (v) and before subparagraph (vi) is replaced by the following:

pour l'application du présent alinéa, un bien immeuble ou réel n'est considéré comme utilisé dans le cadre de l'exploitation d'une entreprise agricole au Canada que si, selon le cas :

234. Clause (a)(ii)(A) of the definition “qualified investment” in subsection 115.2(1) of the Act is replaced by the following:

(A) real or immovable property situated in Canada,

235. (1) Paragraph 116(6)(a.1) of the Act is replaced by the following:

(a.1) a property (other than real or immovable property situated in Canada, a Canadian resource property or a timber resource property) that is described in an inventory of a business carried on in Canada by the person;

(2) Paragraph 116(6)(h) of the Act is replaced by the following:

(h) an interest, or for civil law a right, in property referred to in any of paragraphs (a) to (g).

236. The portion of the definition “specified investment business” in subsection 125(7) of the Act before paragraph (a) is replaced by the following:

“specified
investment
business”
« entreprise de
placement
déterminée »

“specified investment business”, carried on by a corporation in a taxation year, means a business (other than a business carried on by a credit union or a business of leasing property other than real or immovable property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

237. (1) The portion of subparagraph 126(2.21)(a)(i) of the Act before clause (A) is replaced by the following:

(i) where the property is real or immovable property situated in a country other than Canada,

(2) Subparagraph 126(2.21)(a)(ii) of the Act is replaced by the following:

(ii) where the property is not real or immovable property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

(3) The portion of subparagraph 126(2.22)(a)(i) of the Act before clause (A) is replaced by the following:

(i) where the property is real or immovable property situated in a country other than Canada,

(4) Subparagraph 126(2.22)(a)(ii) of the Act is replaced by the following:

(ii) where the property is not real or immovable property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

238. Paragraph (d) of the description of A of the definition “scientific research and experimental development tax credit” in subsection 127.3(2) of the English version of the Act is replaced by the following:

(d) a bond, debenture, bill, note, mortgage or hypothecary claim, or similar obligation (in this section referred to as a “debt obligation”) acquired by the taxpayer in the year where the taxpayer is the first person, other than a broker or dealer in securities, to be a registered holder of that debt obligation, or

239. (1) The portion of paragraph 128(1)(e) of the English version of the Act before subparagraph (i) is replaced by the following:

(e) where, in the case of any taxation year of the corporation ending during the period the corporation is a bankrupt, the corporation fails to pay any tax payable by the corporation under this Act for any such year, the corporation and the trustee in bankruptcy are jointly and severally, or solidarily, liable to pay the tax, except that

(2) Subparagraph 128(1)(e)(ii) of the Act is replaced by the following:

- (ii) payment by either of them discharges the liability to the extent of the amount paid;

240. (1) Subparagraph 128.1(4)(b)(i) of the Act is replaced by the following:

- (i) real or immovable property situated in Canada, a Canadian resource property or a timber resource property,

(2) Subparagraph 128.1(7)(h)(ii) of the English version of the Act is replaced by the following:

- (ii) if the individual alone makes such an election or specification, the individual and the trust are jointly and severally, or solidarily, liable for any amount payable under this Act by the trust as a result of the election or specification, and

241. (1) Paragraphs 130.1(6)(b) and (c) of the Act are replaced by the following:

(b) its only undertaking was the investing of funds of the corporation and it did not manage or develop any real or immovable property;

(c) none of the property of the corporation consisted of

- (i) debts owing to the corporation that were secured on real or immovable property situated outside Canada,
- (ii) debts owing to the corporation by non-resident persons, except any such debts that were secured on real or immovable property situated in Canada,
- (iii) shares of the capital stock of corporations not resident in Canada, or
- (iv) real or immovable property situated outside Canada, or any leasehold interest in such property;

(2) Paragraph 130.1(6)(g) of the Act is replaced by the following:

(g) the cost amount to the corporation of all real or immovable property of the corporation, including leasehold interests in such property (except real or immovable property acquired by the corporation by foreclosure or otherwise after default made on a mortgage, hypothec or agreement of sale of real or immovable property) did not exceed 25% of the cost amount to it of all its property;

242. Subparagraphs 131(8)(b)(i) and (ii) of the Act are replaced by the following:

- (i) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),
- (ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the corporation, or

243. Subparagraphs 132(6)(b)(i) and (ii) of the Act are replaced by the following:

- (i) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the trust, or

244. (1) Subparagraphs (b)(i) to (iii) of the definition “non-resident-owned investment corporation” in subsection 133(8) of the Act are replaced by the following:

(i) ownership of, or trading or dealing in, bonds, shares, debentures, mortgages, hypothecary claims, bills, notes or other similar property or any interest, or for civil law any right, therein,

(ii) lending money with or without security,

(iii) rents, hire of chattels, charterparty fees or remunerations, annuities, royalties, interest or dividends,

(2) Paragraph (c) of the definition “société de placement appartenant à des non-résidents” in subsection 133(8) of the French version of the Act is replaced by the following:

(c) au plus 10 % de son revenu brut de chaque année d'imposition se terminant au cours de la période ont été tirés de loyers, de la location de chatels, de frais ou rémunérations sur chartes-parties;

245. (1) Subsection 138(4.4) of the Act is replaced by the following:

(4.4) Where, for a period of time in a taxation year, a life insurer

(a) owned land (other than land referred to in paragraph (c) or (d)) or an interest, or for civil law a right, therein that was not held primarily for the purpose of gaining or producing income from the land for the period,

(b) had an interest, or for civil law a right, in a building that was being constructed, renovated or altered,

(c) owned land subjacent to the building referred to in paragraph (b) or an interest, or for civil law a right, therein, or

(d) owned land immediately contiguous to the land referred to in paragraph (c) or an interest, or for civil law a right, therein that was used or was intended to be used for a parking area, driveway, yard, garden or other use necessary for the use or intended use of the building referred to in paragraph (b),

there shall be included in computing the insurer's income for the year, where the land, building, or interest or right, was designated insurance property of the insurer for the year, or property used or held by it in the year in the course of carrying on an insurance business in Canada, the total of all amounts each of which is the amount prescribed in respect of the insurer's cost or capital cost, as the case may be, of the land, building, or interest or right, for the period, and the amount prescribed shall, at the end of the period, be included in computing

(e) where the land, or interest or right therein, is property described in paragraph (a), the cost to the insurer of the land, or of the interest or right therein, and

(f) where the land, building, or interest or right therein, is property described in paragraphs (b) to (d), the capital cost to the insurer of the interest or right in the building described in paragraph (b).

(2) Clauses 138(4.5)(b)(ii)(A) and (B) of the French version of the Act are replaced by the following:

(A) si le bien est un fonds de terre, ou un intérêt ou, pour l'application du droit civil, un droit sur un fonds de terre du cessionnaire, visé à l'alinéa (4.4)a), dans le calcul du coût de ce bien pour le cessionnaire,

(B) si le bien est un fonds de terre, un bâtiment, ou un intérêt ou, pour l'application du droit civil, un droit sur un fonds de terre ou un bâtiment, visé aux alinéas (4.4)b) à d), dans le calcul du coût en capital, pour le cessionnaire, de l'intérêt ou, pour l'application du droit civil, du droit sur le bâtiment visé à l'alinéa (4.4)b).

(3) Clauses 138(4.5)(e)(ii)(A) and (B) of the English version of the Act are replaced by the following:

(A) where the property is land or an interest, or for civil law a right, therein of the transferee described in paragraph (4.4)(a), the cost to the transferee of the land, or of the interest or right therein, and

(B) where the property is land or a building, or an interest therein or for civil law a right therein, described in paragraphs (4.4)(b) to (d), the capital cost to the transferee of the interest or of the right in the building described in paragraph (4.4)(b).

246. (1) Subparagraph 142.7(7)(a)(ii) of the Act is replaced by the following:

(ii) the entrant bank assumes an obligation of the Canadian affiliate that is an instrument or commitment described in paragraph 20(1)(l.1) or an obligation in respect of goods, services, land, or chattels or movable property, described in subparagraph 20(1)(m)(i), (ii) or (iii),

(2) Subparagraph 142.7(7)(f)(ii) of the Act is replaced by the following:

(ii) in applying paragraph 20(1)(m), an amount in respect of the goods, services, land, or chattels or movable property, that was included under paragraph 12(1)(a) in computing the Canadian affiliate's income from a business is deemed to have been so included in computing the entrant bank's income from its Canadian banking business for a preceding taxation year,

247. (1) Subparagraph (a)(iii) of the definition "earned income" in subsection 146(1) of the Act is replaced by the following:

(iii) property, where the income is derived from the rental of real or immovable property or from royalties in respect of a work or invention of which the taxpayer was the author or inventor,

(2) Subparagraph (e)(ii) of the definition “earned income” in subsection 146(1) of the Act is replaced by the following:

(ii) property, where the loss is sustained from the rental of real or immovable property,

248. Clauses 149(1)(o.2)(ii)(A) to (C) of the Act are replaced by the following:

(A) limited its activities to

(I) acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest in real property — or immovables or a real right in immovables — owned by the corporation, another corporation described by this subparagraph and subparagraph (iv) or a registered pension plan, and

(II) investing its funds in a partnership that limits its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest in real property — or immovables or a real right in immovables — owned by the partnership,

(B) made no investments other than in real property or an interest in real property — or immovables or a real right in immovables — or investments that a pension plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and

(C) borrowed money solely for the purpose of earning income from real property or an interest in real property or from immovables or a real right in immovables,

249. Paragraph 153(6)(c) of the Act is replaced by the following:

(c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or of hypothecs on immovables.

250. The portion of paragraph 159(1)(a) of the English version of the Act before subparagraph (i) is replaced by the following:

(a) the legal representative is jointly and severally, or solidarily, liable with the taxpayer

251. (1) Paragraph 160(1)(d) of the English version of the Act is replaced by the following:

(d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor’s tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

(2) The portion of paragraph 160(1)(e) of the English version of the Act before subparagraph (i) is replaced by the following:

(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

(3) The portion of subsection 160(1.1) of the English version of the Act before the formula is replaced by the following:

(1.1) Where a particular person or partnership is deemed by subsection 69(11) to have disposed of a property at any time, the person referred to in that subsection to whom a benefit described in that subsection was available in respect of a subsequent disposition of the property or property substituted for the property is jointly and severally, or solidarily, liable with each other taxpayer to pay a part of the other taxpayer's liabilities under this Act in respect of each taxation year equal to the amount determined by the formula

(4) The portion of subsection 160(1.2) of the English version of the Act before paragraph (a) is replaced by the following:

(1.2) A parent of a specified individual is jointly and severally, or solidarily, liable with the individual for the amount required to be added because of subsection 120.4(2) in computing the specified individual's tax payable under this Part for a taxation year if, during the year, the parent

(5) Paragraph 160(3)(a) of the Act is replaced by the following:

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge their liability; but

(6) Paragraph 160(3)(b) of the English version of the Act is replaced by the following:

(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally, or solidarily, liable.

(7) Subsection 160(3.1) of the Act is replaced by the following:

(3.1) For the purposes of this section and section 160.4, the fair market value at any time of an undivided interest, or for civil law an undivided right, in a property, expressed as a proportionate interest or right in that property, is, subject to subsection (4), deemed to be equal to the same proportion of the fair market value of that property at that time.

252. Subsections 160.1(2.1) and (2.2) of the English version of the Act are replaced by the following:

(2.1) Where a person was a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual at the end of a taxation year, the person and the individual are jointly and severally, or solidarily, liable to pay any excess described in subsection (1) that was refunded in respect of the year to, or applied to a liability of, the individual as a consequence of the operation of section 122.61 if the person was the individual's cohabiting spouse or common-law partner at the time the excess was refunded, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

Joint and several, or solidary, liability — subsection 69(11)

Joint and several, or solidary, liability — tax on split income

Fair market value of undivided interest or right

Liability for refunds by reason of section 122.61

Liability for
excess refunds
under section
126.1 to
partners

(2.2) Every taxpayer who, on the day on which an amount has been refunded to, or applied to the liability of, a member of a partnership as a consequence of the operation of subsection 126.1(7) or (13) in excess of the amount to which the member was so entitled, is a member of that partnership is jointly and severally, or solidarily, liable with each other taxpayer who on that day is a member of the partnership to pay the excess and to pay interest on the excess, but nothing in this subsection shall be deemed to limit the liability of any person under any other provision of this Act.

253. (1) The portion of subsection 160.2(4) of the English version of the Act before paragraph (a) is replaced by the following:

Rules
applicable

(4) Where a taxpayer and an annuitant have, by virtue of subsection (1) or (2), become jointly and severally, or solidarily, liable in respect of part or all of a liability of the annuitant under this Act, the following rules apply:

(2) Paragraph 160.2(4)(a) of the Act is replaced by the following:

(a) a payment by the taxpayer on account of the taxpayer's liability shall to the extent thereof discharge their liability; but

(3) Paragraph 160.2(4)(b) of the English version of the Act is replaced by the following:

(b) a payment by the annuitant on account of the annuitant's liability discharges the taxpayer's liability only to the extent that the payment operates to reduce the annuitant's liability to an amount less than the amount in respect of which the taxpayer was, by subsection (1) or (2), as the case may be, made jointly and severally, or solidarily, liable.

254. (1) The portion of subsection 160.3(3) of the English version of the Act before paragraph (a) is replaced by the following:

Rules
applicable

(3) Where a taxpayer and another person have, by virtue of subsection (1), become jointly and severally, or solidarily, liable in respect of part or all of a liability of the taxpayer under this Act, the following rules apply:

(2) Paragraph 160.3(3)(a) of the Act is replaced by the following:

(a) a payment by the other person on account of the other person's liability shall to the extent thereof discharge their liability; but

(3) Paragraph 160.3(3)(b) of the English version of the Act is replaced by the following:

(b) a payment by the taxpayer on account of the taxpayer's liability discharges the other person's liability only to the extent that the payment operates to reduce the taxpayer's liability to an amount less than the amount in respect of which the other person was, by subsection (1), made jointly and severally, or solidarily, liable.

255. (1) The portion of subsection 160.4(4) of the English version of the Act before paragraph (a) is replaced by the following:

(4) Where a corporation and another person have, because of subsection (1) or (2), become jointly and severally, or solidarily, liable in respect of part or all of a liability of the corporation under this Act

(2) Paragraph 160.4(4)(a) of the Act is replaced by the following:

(a) a payment by the other person on account of that person's liability shall to the extent thereof discharge their liability; and

(3) Paragraph 160.4(4)(b) of the English version of the Act is replaced by the following:

(b) a payment by the corporation on account of the corporation's liability discharges the other person's liability only to the extent that the payment operates to reduce the corporation's liability to an amount less than the amount in respect of which the other person was, by subsection (1) or (2), as the case may be, made jointly and severally, or solidarily, liable.

256. Subparagraph 163.2(8)(b)(i) of the French version of the Act is replaced by the following:

(i) une part a ou doit avoir un numéro d'inscription attribué en vertu de l'article 237.1 qui est le même numéro que celui qui s'applique à chacune des autres parts dans le bien,

257. Paragraph (d) of the definition "financial institution" in subsection 181(1) of the Act is replaced by the following:

(d) authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or of hypothecs on immovables,

258. (1) Paragraph 181.3(1)(a) of the Act is replaced by the following:

(a) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution (other than property held by the institution primarily for the purpose of resale that was acquired by the financial institution, in the year or the preceding taxation year, as a consequence of another person's default, or anticipated default, in respect of a debt owed to the institution) that is tangible, or for civil law corporeal, property used in Canada and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by subsection 138(12),

(2) Subparagraph 181.3(1)(b)(i) of the Act is replaced by the following:

(i) the total of all amounts each of which is the carrying value of an asset of the partnership, at the end of its last fiscal period ending at or before the end of the year, that is tangible, or for civil law corporeal, property used in Canada

259. Subparagraph 181.4(d)(i) of the Act is replaced by the following:

- (i) is a ship or aircraft operated by the corporation in international traffic or is personal or movable property used in its business of transporting passengers or goods by ship or aircraft in international traffic, and

260. (1) The portion of subsection 185(4) of the English version of the Act before paragraph (a) is replaced by the following:

Joint and several, or solidary, liability from excessive elections

- (4) Each person who has received a dividend from a corporation in respect of which the corporation elected under subsection 83(2), 130.1(4) or 131(1) is jointly and severally, or solidarily, liable with the corporation to pay that proportion of the corporation's tax payable under this Part because of the election that

(2) The portion of subsection 185(6) of the English version of the Act before paragraph (a) is replaced by the following:

Rules applicable

- (6) Where under subsection (4) a corporation and another person have become jointly and severally, or solidarily, liable to pay part or all of the corporation's tax payable under this Part in respect of a dividend described in subsection (4),

(3) Paragraph 185(6)(a) of the Act is replaced by the following:

- (a) a payment at any time by the other person on account of the liability shall, to the extent of the payment, discharge their liability after that time; and

261. (1) The portion of subsection 188(2) of the English version of the Act before paragraph (a) is replaced by the following:

Joint and several, or solidary, liability — revocation tax

- (2) A person (other than a qualified donee) who, after the valuation day of a charity, receives an amount from the charity is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1) by the charity in an amount not exceeding the amount by which the total of all such amounts so received by the person exceeds the total of all amounts each of which is

(2) Subsection 188(4) of the English version of the Act is replaced by the following:

Joint and several, or solidary, liability — tax transfer

- (4) Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

262. Paragraph (c) of the definition “financial institution” in subsection 190(1) of the Act is replaced by the following:

- (c) is authorized under the laws of Canada or a province to accept deposits from the public and carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or of hypothecs on immovables,

263. (1) Paragraph 191.3(1)(e) of the English version of the Act is replaced by the following:

(e) the transferor corporation and the transferee corporation are jointly and severally, or solidarily, liable to pay the amount of tax specified in the agreement and any interest or penalty in respect thereof.

(2) Subsection 191.3(5) of the English version of the Act is replaced by the following:

(5) The Minister may at any time assess a transferor corporation in respect of any amount for which it is jointly and severally, or solidarily, liable by reason of paragraph (1)(e) and the provisions of Division I of Part I are applicable in respect of the assessment as though it had been made under section 152.

(3) The portion of subsection 191.3(6) of the English version of the Act before paragraph (a) is replaced by the following:

(6) Where a transferor corporation and a transferee corporation are by reason of paragraph (1)(e) jointly and severally, or solidarily, liable in respect of tax payable by the transferee corporation under subparagraph 191.1(1)(a)(iv) and any interest or penalty in respect thereof, the following rules apply:

(4) Paragraph 191.3(6)(a) of the Act is replaced by the following:

(a) a payment by the transferor corporation on account of the liability shall, to the extent thereof, discharge their liability; and

(5) Paragraph 191.3(6)(b) of the English version of the Act is replaced by the following:

(b) a payment by the transferee corporation on account of its liability discharges the transferor corporation's liability only to the extent that the payment operates to reduce the transferee corporation's liability under this Act to an amount less than the amount in respect of which the transferor corporation was, by paragraph (1)(e), made jointly and severally, or solidarily, liable.

264. (1) The portion of subparagraph 204.4(2)(a)(ii) of the Act after clause (A) is replaced by the following:

(B) the amount by which the fair market value at the time of acquisition of its real or immovable property that may reasonably be regarded as being held for the purpose of producing income from property exceeds the total of all amounts each of which is owing by it on account of its acquisition of the real or immovable property

is not less than 80% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real or immovable property,

(2) Subparagraphs 204.4(2)(a)(iii) and (iv) of the Act are replaced by the following:

(iii) the fair market value at the time of acquisition of its shares, bonds, mortgages, hypothecary claims and other securities of any one corporation or debtor (other than

Assessment of
transferor
corporation

Payment by
transferor
corporation

bonds, mortgages, hypothecary claims and other securities of or guaranteed by Her Majesty in right of Canada or a province or Canadian municipality) is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is an amount owing by it on account of its acquisition of real or immovable property,

(iv) the amount by which

(A) the fair market value at the time of acquisition of any one of its real or immovable properties

exceeds

(B) the total of all amounts each of which is owing by it on account of its acquisition of the real or immovable property

is not more than 10% of the amount by which the fair market value at the time of acquisition of all its property exceeds the total of all amounts each of which is owing by it on account of its acquisition of real or immovable property,

(3) Clause 204.4(2)(a)(viii)(A) of the Act is replaced by the following:

(A) a mortgage or hypothecary claim (other than a mortgage or hypothecary claim insured under the *National Housing Act* or by a corporation that offers its services to the public in Canada as an insurer of mortgages or hypothecary claims and that is approved as a private insurer of mortgages or hypothecary claims by the Superintendent of Financial Institutions pursuant to the powers assigned to the Superintendent under subsection 6(1) of the *Office of the Superintendent of Financial Institutions Act*), or an interest therein, or for civil law a right therein, in respect of which the mortgagor or hypothecary debtor is the annuitant under a registered retirement savings plan or registered retirement income fund, or a person with whom the annuitant is not dealing at arm's length, if any of the funds of a trust governed by such a plan or fund have been used to acquire an interest in the applicant, or

265. (1) Subparagraph 204.6(2)(b)(ii) of the Act is replaced by the following:

(ii) the total of all amounts each of which is an amount owing by the trust at the end of the month in respect of the acquisition of real property or immovables.

(2) Subsection 204.6(3) of the Act is replaced by the following:

(3) Where at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(a) holds real or immovable property, it shall, in respect of that month, pay a tax under this Part equal to 1% of the total of all amounts each of which is the amount by which the excess of

(a) the fair market value at the time of its acquisition of any one real or immovable property of the taxpayer

over

Tax payable —
real property
or immovables

(b) the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of the real or immovable property

was greater than 10% of the amount by which the total of all amounts each of which is the fair market value at the time of its acquisition of a property held by it at the end of the month exceeds the total of all amounts each of which was an amount owing by it at the end of the month on account of its acquisition of real or immovable property.

266. Paragraphs (c) and (c.1) of the definition “carved-out property” in subsection 209(1) of the Act are replaced by the following:

(c) an interest, or for civil law a right, in respect of a property that was acquired by the person solely in consideration of the person’s undertaking under an agreement to incur Canadian exploration expense or Canadian development expense in respect of the property and, where the agreement so provides, to acquire gas or oil well equipment (as defined in subsection 1104(2) of the *Income Tax Regulations*) in respect of the property,

(c.1) an interest, or for civil law a right, in respect of a property that was retained by the person under an agreement under which another person obtained an absolute or conditional right to acquire another interest, or for civil law another right, in respect of the property, if the other interest or right is not carved-out property of the other person because of paragraph (c),

267. (1) Subparagraph 212(1)(b)(viii) of the Act is replaced by the following:

(viii) interest payable on a mortgage, hypothecary claim or similar obligation secured by, or on an agreement for sale or similar obligation with respect to real property situated outside Canada or an interest in any such real property, or to immovables situated outside Canada or a real right in any such immovable, except to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by the payer in Canada or from property other than real or immovable property situated outside Canada,

(2) Subparagraphs 212(1)(d)(viii) and (ix) of the Act are replaced by the following:

(viii) a payment made under a *bona fide* cost-sharing arrangement under which the person making the payment shares on a reasonable basis with one or more non-resident persons research and development expenses in exchange for an interest, or for civil law a right, in any or all property or other things of value that may result therefrom,

(ix) a rental payment for the use of or the right to use outside Canada any tangible, or for civil law corporeal, property,

(3) Paragraph 212(13)(f) of the Act is replaced by the following:

(f) interest on any mortgage, hypothecary claim or other indebtedness entered into or issued or modified after March 31, 1977 and secured by real property situated in Canada or an interest therein, or by immovables situated in Canada or real rights therein, to the extent that the amount so paid or credited is deductible in computing the non-resident

person's taxable income earned in Canada or the amount on which the non-resident person is liable to pay tax under Part I,

268. (1) Paragraph 216(1)(b) of the Act is replaced by the following:

(b) the non-resident person's income from the non-resident person's interest in real property, or real right in immovables, in Canada and interest in, or for civil law right in, timber resource properties and timber limits in Canada, and the non-resident person's share of the income of a partnership of which the non-resident person was a member from its interest in real property, or real right in immovables, in Canada and interest in, or for civil law right in, timber resource properties and timber limits in Canada, were the non-resident person's only income;

(2) Paragraphs 216(2)(a) and (b) of the Act are replaced by the following:

- (a) rent on real or immovable property or from timber royalties paid to the person, and
- (b) the person's share of the rent on real or immovable property or from timber royalties paid to a partnership of which the person is a member

(3) The portion of subsection 216(4) of the Act before paragraph (a) is replaced by the following:

(4) Where a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within 6 months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real or immovable property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

(4) Paragraph 216(5)(b) of the Act is replaced by the following:

(b) the person's income from the person's interest in real property, or real right in immovables, in Canada or interest in, or for civil law right in, timber resource properties and timber limits in Canada, and the person's share of the income of a partnership of which the person was a member from its interest in real property, or real right in immovables, in Canada or interest in, or for civil law right in, timber resource properties and timber limits in Canada, were the person's only income;

269. Subsection 219(1.1) of the Act is replaced by the following:

(1.1) For the purpose of subsection (1), the definition "taxable Canadian property" in subsection 248(1) shall be read without reference to paragraphs (a) and (c) to (k) of that definition and as if the only options, interests or rights referred to in paragraph (l) of that definition were those in respect of property described in paragraph (b) of that definition.

270. (1) The portion of subsection 223(5) of the Act before paragraph (a) is replaced by the following:

Optional
method of
payment

Excluded
gains

Charge on
property

(5) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (3), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a “memorial”) may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in, or for civil law any right in, such property, held by the debtor in the same manner as a document evidencing

(2) Subsection 223(6) of the Act is replaced by the following:

Creation of
charge

(6) If a memorial has been filed, registered or otherwise recorded under subsection (5),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in, or for civil law any right in, such property, held by the debtor, or

(b) such property, or interest or right in the property, is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (5)(a) or an amount referred to in paragraph (5)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

(3) Paragraphs 223(7)(c) and (d) of the Act are replaced by the following:

(c) to cancel or withdraw the memorial wholly or in respect of any of the property, or interests or rights, affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or right, affected by the memorial,

(4) Paragraph 223(8)(a) of the English version of the Act is replaced by the following:

(a) a memorial is presented for filing, registration or other recording under subsection (5) or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (7) to any official in the land registry system, personal property or movable property registry system, or other registry system, of a province, it shall be accepted for filing, registration or other recording, or

(5) Subsection 223(8) of the French version of the Act is replaced by the following:

Présentation
des documents

(8) L'extrait qui est présenté pour production, enregistrement ou autre inscription en application du paragraphe (5), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures visées au paragraphe (7), à un agent d'un régime d'enregistrement foncier ou des droits sur des biens

meubles ou personnels ou autres droits d'une province est accepté pour production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (5)a) ou d'un montant visé à l'alinéa (5)b) dans le cadre de procédures semblables. Aux fins de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Lorsque l'extrait ou le document est délivré par la Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé avoir été ainsi fourni ou accompagner ainsi l'extrait ou le document.

271. The definition “security interest” in subsection 224(1.3) of the Act is replaced by the following:

“security interest” means any interest in, or for civil law any right in, property that secures payment or performance of an obligation and includes an interest, or for civil law a right, created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

272. Section 224.2 of the Act is replaced by the following:

224.2 For the purpose of collecting debts owed by a person to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act, the Minister may purchase or otherwise acquire any interest in, or for civil law any right in, the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest or right so acquired in such manner as the Minister considers reasonable.

273. (1) Subsection 225(1) of the Act is replaced by the following:

225. (1) Where a person has failed to pay an amount as required by this Act, the Minister may give 30 days notice to the person by registered mail addressed to the person's latest known address of the Minister's intention to direct that the person's goods and chattels, or movable property, be seized and sold, and, if the person fails to make the payment before the expiration of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels, or movable property, be seized.

(2) Subsection 225(5) of the Act is replaced by the following:

(5) Such goods and chattels, or movable property, of any person in default as would be exempt from seizure under a writ of execution issued out of a superior court of the province in which the seizure is made are exempt from seizure under this section.

274. Subsection 226(2) of the Act is replaced by the following:

“security
interest”
« *garantie* »

Acquisition of
debtor's
property

Seizure of
goods, chattels
or movable
property

Exemptions
from seizure

Seizure in case of default of payment

(2) Where a taxpayer fails to pay, as required, any tax, interest or penalties demanded under this section, the Minister may direct that the goods and chattels, or movable property, of the taxpayer be seized and subsections 225(2) to (5) apply, with respect to the seizure, with such modifications as the circumstances require.

275. (1) The portion of paragraph 227(5)(b) of the English version of the Act before subparagraph (i) is replaced by the following:

(b) is jointly and severally, or solidarily, liable with the payer to pay to the Receiver General

(2) Subsection 227(8.1) of the English version of the Act is replaced by the following:

(8.1) Where a particular person has failed to deduct or withhold an amount as required under subsection 153(1) or section 215 in respect of an amount that has been paid to a non-resident person, the non-resident person is jointly and severally, or solidarily, liable with the particular person to pay any interest payable by the particular person pursuant to subsection (8.3) in respect thereof.

(3) Subsection 227(10.2) of the English version of the Act is replaced by the following:

(10.2) Where a non-resident person fails to deduct, withhold or remit an amount as required by subsection 153(1) in respect of a contribution under a retirement compensation arrangement that is paid on behalf of the employees or former employees of an employer with whom the non-resident person does not deal at arm's length, the employer is jointly and severally, or solidarily, liable with the non-resident person to pay any amount payable under subsection (8), (8.2), (8.3), (9), (9.2) or (9.4) by the non-resident person in respect of the contribution.

276. Subsection 227.1(1) of the English version of the Act is replaced by the following:

227.1 (1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.

277. (1) Paragraphs (a) and (b) of the definition "specified foreign property" in subsection 233.3(1) of the English version of the Act are replaced by the following:

(a) funds or intangible property, or for civil law incorporeal property, situated, deposited or held outside Canada,

(b) tangible property, or for civil law corporeal property, situated outside Canada,

(2) Paragraph (h) of the definition "specified foreign property" in subsection 233.3(1) of the English version of the Act is replaced by the following:

Joint and several, or solidary, liability

Joint and several, or solidary, liability re contributions to RCA

Liability of directors for failure to deduct

(h) an interest in, or for civil law a right in, or a right — under a contract in equity or otherwise either immediately or in the future and either absolutely or contingently — to, any property (other than any property owned by a corporation or trust that is not the person) that is specified foreign property, and

(3) Paragraph (q) of the definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is replaced by the following:

(q) an interest in, or for civil law a right in, or a right to acquire, a property that is described in any of paragraphs (j) to (p).

(4) Subparagraphs (a)(i) and (ii) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act are replaced by the following:

(i) les fonds ou le bien intangible ou, pour l’application du droit civil, le bien incorporel situés, déposés ou détenus à l’étranger,

(ii) le bien tangible ou, pour l’application du droit civil, le bien corporel situé à l’étranger,

(5) Subparagraph (a)(viii) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act is replaced by the following:

(viii) l’intérêt ou, pour l’application du droit civil, le droit sur un bien (sauf celui appartenant à une société ou une fiducie autre que la personne) qui est un bien étranger déterminé ou le droit à un tel bien, immédiat ou futur, absolu ou conditionnel et prévu par un contrat, en equity ou autrement,

(6) Subparagraph (b)(viii) of the definition “bien étranger déterminé” in subsection 233.3(1) of the French version of the Act is replaced by the following:

(viii) l’intérêt ou, pour l’application du droit civil, le droit sur un bien visé à l’un des sous-alinéas (i) à (vii) ou le droit d’acquérir un tel bien.

278. (1) Paragraph (c) of the definition “foreign resource property” in subsection 248(1) of the Act is replaced by the following:

(c) an oil or gas well in that country or real or immovable property in that country the principal value of which depends on its petroleum or natural gas content (but not including depreciable property),

(2) Paragraph (f) of the definition “foreign resource property” in subsection 248(1) of the Act is replaced by the following:

(f) a real or immovable property in that country the principal value of which depends upon its mineral resource content (but not including depreciable property), or

(3) The portion of the definition “former business property” in subsection 248(1) of the Act after paragraph (d) is replaced by the following:

and for the purpose of this definition, “rental property” of a taxpayer means real or immovable property owned by the taxpayer, whether jointly with another person or otherwise, and

used by the taxpayer in the taxation year in respect of which the expression is being applied principally for the purpose of gaining or producing gross revenue that is rent (other than property leased by the taxpayer to a person related to the taxpayer and used by that related person principally for any other purpose), but, for greater certainty, does not include a property leased by the taxpayer or the related person to a lessee, in the ordinary course of a business of the taxpayer or the related person of selling goods or rendering services, under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the goods or services of the taxpayer or the related person;

(4) The portion of the definition “property” in subsection 248(1) of the Act before paragraph (a) is replaced by the following:

“property”
« biens »

“property” means property of any kind whatever whether real or personal, immovable or movable, tangible or intangible, or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

(5) Paragraph (a) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(a) real or immovable property situated in Canada,

(6) Subparagraph (b)(ii) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal or movable property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,

(7) Clause (e)(i)(E) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(E) an option in respect of, or an interest in, or for civil law a right in, a property described in any of clauses (B) to (D), whether or not the property exists,

(8) Clause (e)(ii)(A) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(A) real or immovable property situated in Canada,

(9) Subparagraph (g)(v) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(v) an option in respect of, or an interest in, or for civil law a right in, a property described in any of subparagraphs (ii) to (iv), whether or not that property exists,

(10) Clause (k)(i)(E) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(E) an option in respect of, or an interest in, or for civil law a right in, a property described in any of clauses (B) to (D), whether or not that property exists

(11) Clause (k)(ii)(A) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(A) real or immovable property situated in Canada,

(12) Paragraph (l) of the definition “taxable Canadian property” in subsection 248(1) of the Act is replaced by the following:

(l) an option in respect of, or an interest in, or for civil law a right in, a property described in any of paragraphs (a) to (k), whether or not that property exists,

(13) Subsection 248(4) of the French version of the Act is replaced by the following:

(4) Dans la présente loi, sont compris dans les intérêts sur des biens réels, les tenures à bail mais non les intérêts servant de garantie seulement et découlant d’une créance hypothécaire, d’une convention de vente ou d’un titre semblable.

Intérêt sur un
bien réel

(14) Section 248 of the Act is amended by adding the following after subsection (4):

(4.1) In this Act, a real right in an immovable includes a lease but does not include a security right derived by virtue of a hypothecary claim, agreement for sale or similar obligation.

Real right in
immovables

(15) Subsections 248(20) and (21) of the Act are replaced by the following:

(20) Subject to subsections (21) to (23), for the purposes of this Act, where at any time a property owned by two or more persons is the subject of a partition, the following rules apply, notwithstanding any retroactive or declaratory effect of the partition:

Partition of
property

(a) each such person who had, immediately before that time, an interest in, or for civil law a right in, the property (which interest or right in the property is referred to in this subsection and subsection (21) as an “interest” or a “right”, as the case may be) shall be deemed not to have disposed at that time of that proportion, not exceeding 100%, of the interest or right that the fair market value of that person’s interest or right in the property immediately after that time is of the fair market value of that person’s interest or right in the property immediately before that time,

(b) each such person who has an interest or right in the property immediately after that time shall be deemed not to have acquired at that time that proportion of the interest or right that the fair market value of that person’s interest or right in the property immediately before that time is of the fair market value of that person’s interest or right in the property immediately after that time,

(c) each such person who had an interest or a right in the property immediately before that time shall be deemed to have had until that time, and to have disposed at that time of, that proportion of the person’s interest or right to which paragraph (a) does not apply,

(d) each such person who has an interest or a right in the property immediately after that time shall be deemed not to have had before that time, and to have acquired at that time, that proportion of the person’s interest or right to which paragraph (b) does not apply, and

(e) paragraphs (a) to (d) do not apply where the interest or right of the person is an interest or a right in fungible tangible property, or for civil law fungible corporeal property described in that person's inventory,

and, for the purposes of this subsection, where an interest or a right in the property is an undivided interest or right, the fair market value of the interest or right at any time shall be deemed to be equal to that proportion of the fair market value of the property at that time that the interest or right is of all the undivided interests or rights in the property.

Subdivision of
property

(21) Where a property that was owned by two or more persons is the subject of a partition among those persons and, as a consequence thereof, each such person has, in the property, a new interest or right the fair market value of which immediately after the partition, expressed as a percentage of the fair market value of all the new interests or rights in the property immediately after the partition, is equal to the fair market value of that person's undivided interest or right immediately before the partition, expressed as a percentage of the fair market value of all the undivided interests or rights in the property immediately before the partition,

(a) subsection (20) does not apply to the property, and

(b) the new interest or right of each such person shall be deemed to be a continuation of that person's undivided interest or right in the property immediately before the partition,

and, for the purposes of this subsection,

(c) subdivisions of a building or of a parcel of land that are established in the course of, or in contemplation of, a partition and that are co-owned by the same persons who co-owned the building or the parcel of land, or by their assignee, shall be regarded as one property, and

(d) where an interest or a right in the property is or includes an undivided interest or right, the fair market value of the interest or right shall be determined without regard to any discount or premium that applies to a minority or majority interest or right in the property.

(16) The portion of subsection 248(23.1) of the Act before paragraph (a) is replaced by the following:

Transfers after
death

(23.1) Where, as a consequence of the laws of a province relating to spouses' or common-law partners' interests or rights in respect of property as a result of marriage or common-law partnership, property is, after the death of a taxpayer:

279. Subparagraphs 253(c)(ii) and (iii) of the Act are replaced by the following:

(ii) property (other than depreciable property) that is a timber resource property, an option in respect of a timber resource property or an interest in, or for civil law a right in, a timber resource property, or

(iii) property (other than capital property) that is real or immovable property situated in Canada, including an option in respect of such property or an interest in, or for civil law a real right in, such property, whether or not the property is in existence,

PART 4

COORDINATING AMENDMENTS

Bill C-38

280. If Bill C-38, introduced in the 1st session of the 38th Parliament on February 1, 2005 and entitled the *Civil Marriage Act* (referred to in this section as the “other Act”) is assented to after this Act is assented to, then on the day on which subsection 12(3) of the other Act comes into force, subsection 252(3) of the Act, as enacted by subsection 12(3) of the other Act, is replaced by the following:

Extended
meaning of
“spouse” and
“former
spouse”

(3) For the purposes of paragraph 56(1)(b), section 56.1, paragraphs 60(b) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition “pre-1972 spousal trust” in subsection 108(1), subsection 146(16), subparagraph 146.3(2)(f)(iv), subsections 146.3(14), 147(19), 147.3(5) and (7) and 148(8.1) and (8.2), the definition “small business property” in subsection 206(1), subsections 210(1) and 248(22) and (23), “spouse” and “former spouse” of a particular individual include another individual who is a party to a voidable or void marriage with the particular individual.

